United States Court of Appeals

for the Second Circuit

APPENDIX

76-6019

United States Court of Appeals

FOR THE SECOND CIRCUIT

FIRST NATIONAL CITY BANK, et al.
Plaintiffs-Appellants,
76-6029

THE CHASE MANHATTAN BANK, et al.
Plaintiffs-Appellants,
76-6019

MELLON NATIONAL CORPORATION,
Plaintiff-Appellant,
76-6026

CHEMICAL NEW YORK CORPORATION, et al.
Plaintiffs-Appellants,
76-6035

MORGAN GUARANTY TRUST COMPANY, et al.
Plaintiffs-Appellants,
76-6023

against

FEDERAL TRADE COMMISSION, et al.
Defendants-Appellees.

JOINT APPENDIX OF PLAINTIFFS-APPELLANTS

UNITED STATES COURT OF APPEALS
FILED
MAR 26 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIRST NATIONAL CITY BANK, CITICORP, *vs.* FEDERAL TRADE COMMISSION, LEWIS A. ENGMAN, Chairman Federal Trade Commission, PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members, Federal Trade Commission	CIVIL DOCKET 75 CIV. 4365

For plaintiff:

SHEARMAN & STERLING
53 Wall St.
New York, N. Y. 10005
483-1000

Date	Proceedings
09-04-75	(1) Filed complaint. Issued summons.
09-16-75	(2) Filed summons and return—served the following:
	M. Elizabeth Hanford. Comm. Fed. Trade Commissioner, Wash. D.C. Cert. Mail No. 741234 on 09-09-75.
	Hon. Paul Rand Dixon, Comm. Fed. Trade Commission, Wash. D.C. Cert. Mail No. 741235 on 09-09-75
	Federal Trade Commission, Wash. D.C. Cer No. 162834 on 09-09-75.

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Date	Proceedings
	Hon. Lewis A. Engman, Chairman Fed. Trade Commission, Wash. D.C. Cert. Mail No. 285186 on 09-09-75
	Stephen Nye, Comm. Federal Trade Commission, Wash. D.C. Cert. Mail No. 162711 on 09-09-75
	The Attorney General, Washington, D.C. Cert. Mail No. 162712 on 09-09-75.
10-15-75	(3) Filed Defts Affidavit and Notice of Motion for an order to dismiss actions for lack of jurisdiction etc. Ret: 10-27-75.
10-15-75	(4) Filed Defts Memorandum of Law in support of Commission's motion to dismiss.
10-24-75	(5) Filed stip & order that defts' motion to dismiss the complaint of each of the above-named pltffs, originally retnble on 10-27-75 is adjourned to 11-17-75 and pltffs' answering papers is extended to 11-12-75. So ordered—FRANKEL, J. (Also entered in: 75 Civ. 4417-75 Civ. 4449-75 Civ. 4478 and 75 Civ. 4486)
11-13-75	(6) Filed Pltffs' Memorandum in opposition to Deft. Federal Trade Commission's motion to dismiss.
12-01-75	Filed Commission Defts reply to pltffs memo in opposition to motion to dismiss. (Ent. in 75 Civ 4417, 4449, 4478 & 4486).
12-31-75	Filed Memorandum & Order #43653. In these consolidated cases, pltff banks, having exhausted their administrative appeals, seek preenforcement review of the legality of subpoenas issued by the FTC in connection with its investigation of the energy industry. The FTC's motion to dismiss for lack of subject matter jurisdiction &

Docket Entries

Date	Proceedings
	failure to state a claim is now before the court. For reasons indicated, without retracing all of the doctrine explored in the briefs, the court holds that the complt in these cases should be, & they are, dismissed. So Ordered, FRANKEL, J. m/n (Ent. in 75 Civ 4417, 4449, 4478 & 4486)
01-28-76	Filed pltffs notice of appeal to the USCA from the Order of 12-31-75, dismissing the complt in this other action & the other related actions. Copies sent to: Robert J. Lewis, Federal Trade Comm., Wash. D.C., 20580; Gerald P. Norton, Federal Trade Comm., Wash. D.C. 20580; Gerald Harwood, Federal Trade Comm., Wash. D.C., 20580; & Warren S. Grimes, Federal Trade Comm., Wash. D.C. 20580.
01-29-76	Filed Bond #2468865 for Undertaking for Costs on Appeal in the sum of $250—National Surety Corp.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By G. HARRISON
Deputy Clerk

Docket Entries

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK, (NATIONAL ASSOCIATION) and THE CHASE MANHATTAN CORPORATION, *vs.* FEDERAL TRADE COMMISSION, LEWIS A. ENGMAN, Chairman Federal Trade Commission, PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members Federal Trade Commission	CIVIL DOCKET 75 CIV. 4417

For plaintiff:

MILBANK, TWEED, HADLEY & MCCLOY
1 Chase Manhattan Plaza, N.Y.C., N.Y. 10005
422-2660

Date	Proceedings
09-09-75	(1) Filed complaint. Issued Summons.
09-16-75	(2) Filed summons and return— served the following:
	Federal Trade Comm. Wash. D.C. Cert. Mail No. 162971 on 09-10-75
	The Atty. General, Washington D.C. Cert Mail No. 162977 on 09-10-75
	The Atty. General, Washington D.C. Cert Mail No. 162976 on 09-10-75

Docket Entries

Date	Proceedings
	Lewis A. Engman, Chairman for Fed. Trade Comm. Wash. D.C. Cert Mail No. 162975 on 09-10-75
	Paul Rand Dixon, Member, Fed. Trade Commission, Wash. D.C. Cert. Mail No. 162973 on 09-10-75
	Elizabeth Hanford, Mem. Fed. Trade Commission, Wash. D.C. Cert Mail No. 162974 on 09-10-75
	Stephen A. Nye, Mem. Fed. Trade Commission, Wash. D.C. Cert Mail No. 162972 on 09-10-75
09-17-75	(3) Filed Pltffs request for production of documents.
10-14-75	Case reassigned to FRANKEL, J.
10-15-75	Filed Defts Affidavit and Notice of Motion. See: 75 CIV 4365, 4449, 4478 & 4486
10-15-75	Filed Defts Memorandum of Law: See 75 CIV 4365, 4449, 4478 & 4486.
10-24-75	Filed stip & order that the motion of defts to dismiss the complaint of each of the above-named pltffs. is adjourned from 10-27-75 to 11-17-75, etc. as indicated. So ordered—FRANKEL, J. (filed in 75 Civ. 4365) (Also entered in 75 Civ. 4449—75 Civ. 4478 and 75 Civ. 4486)
11-06-75	(4) Filed deft. Federal Trade Commission response to request for production of documents, dated 09-15-75.
11-12-75	(5) Filed pltffs' affdvt. of Michael P. Esposito, Jr. in opposition to defts' motion to dismiss pursuant to Rule 12(b) (1) and (6) FRCP.

Docket Entries

Date	Proceedings
11-12-75	(6) Filed pltffs' affdvt. of Edward J. Reilly in opposition to defts' motion to dismiss pursuant to Rule 12(b) (1) and (6).
11-12-75	(7) Filed pltffs' memorandum in opposition to defts' motion to dismiss.
12-01-75	Filed Commission defts reply to pltffs memo in opposition to motion to dismiss. (Ent. in 75 Civ. 4365, 4449, 4478, & 4486). (Filed in 75 Civ 4365).
12-31-75	Filed Memorandum & Order #43653. In these consolidated cases, pltff banks, having exhausted their administrative appeals, seek preenforcement review of the legality of subpoenas issued by the FTC in connection with its investigation of the energy industry. The FTC's motion to dismiss for lack of subject matter jurisdiction & failure to state a claim is now before the court. For reasons indicated, without retracing all of the doctrine explored in the briefs, the court holds that the complt in these cases should be, & they are, dismissed . . . . So Ordered, FRANKEL, J. m/n (Filed in 75 Civ 4365).
01-29-76	Filed pltffs notice of appeal to the USCA from the Order dtd 12-31-75, dismissing the complt in this action & the related actions. Copy sent to: Robert J. Lewis, Gerald P. Norton, Gerald Harwood & Warren S. Grimes, Federal Trade Commission, Wash. D.C. 20580.
02-20-76	Filed transcript of proceedings dated 12-30-75. (Filed in 75 Civ 4486, also in 75 Civ 4365, 75 Civ 4449 & 75 Civ 4478)

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By G. HARBISON
Deputy Clerk

Docket Entries

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MELLON NATIONAL CORPORATION, *Plaintiffs,* *v.* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4449

Date	Proceedings
1-28-76	Filed pltffs notice of appeal to the USCA from the order dtd 12-31-75, dismissing the complt. Copy sent to: Warren Grimes, Esq., Federal Trade Commission, Washington, D.C. 20580.
2-20-76	Filed transcript of proceedings dated 12-30-75. (Filed in 75 Civ 4486). (Also entered in 75 Civ 4365, 75 Civ 417 & 75 Civ 4478)
2-27-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.

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RAYMOND F. BURGHARDT, Clerk

By G. HARBISON
Deputy Clerk

(SEAL)

Docket Entries

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEMICAL NEW YORK CORPORATION, CHEMICAL BANK, *vs.* FEDERAL TRADE COMMISSION, LEWIS A. ENGMAN, Chairman Federal Trade Commission, PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members of Federal Trade Commission	CIVIL DOCKET 75 CIV. 4478

For plaintiff:

CRAVATH, SWAINE & MOORE
One Chase Manhattan Plaza
New York, N. Y. 10005
HA 2-3000

Date	Proceedings
09-11-75	(1) Filed complaint. Issued summons.
09-19-75	(2) Filed Summons and return—served the following:
	Federal Trade Commission, Washington D.C. Certified Mail #285121 on 09-15-75
	Lewis A. Engman, FTC—Washington, D.C. Certified Mail #285122 on 09-15-75
	Paul Rand Dixon, FTC—Washington D.C. Certified Mail #285125 on 09-15-75

Docket Entries

Date	Proceedings
	M. Elizabeth Hanford, FTC, Washington D.C. Certified Mail #285124 on 09-15-75
	The Attorney General, Washington D.C. Certified Mail #285120 on 09-15-75
	Stephen Nye, FTC Washington D.C. Certified Mail #285123 on 09-15-75.
10-14-75	Case reassigned to FRANKEL, J.
10-15-75	Filed Defts Affidavit and Notice of Motion. See 75 CIV 4365, 4417, 4449 & 4486.
10-15-75	Filed Defts Memorandum of Law. See 75 CIV 4365, 4417, 4449 & 4486.
10-24-75	Filed stip & order adjourning defts' motion to dismiss complaint from 10-27-75 to 11-17-75, etc. as indicated. So ordered—FRANKEL, J. (filed in 75 Civ. 4365) (Also entered in 75 Civ. 4417—75 Civ. 4449 and 75 Civ. 4486)
12-01-75	Filed Commission defts reply to pltffs memo in opposition to the motion to dismiss. (Ent. in 75 Civ 4365, 4417, 4449 & 4486). (Filed in 74 Civ 4365)
12-31-75	Filed Memorandum & Order #43653. In these consolidated cases, pltff banks, having exhausted their administrative appeals, seek preenforcement review of the legality of subpoenas issued by the FTC in connection with its investigation of the energy industry. The FTC's motion to dismiss for lack of subject matter jurisdiction & failure to state a claim is now before the court. For reasons indicated, without retracing all the doctrine explored in the briefs, the court holds that the complts in these cases should

Date	Proceedings
	be, & they are, dismissed . . . . So Ordered, FRANKEL, J. m/n (Filed in 75 Civ 4365)
2-10-76	Filed Notice of Appeal to the USCA that pltffs Chemical N.Y. Corp., & Chemical Bank, appeal from the order of Judge Frankel, dated & entered on 12-31-75, dismissing the complt in this action, & the complts in actions 75 Civ 4365, 75 Civ 4417, 75 Civ 4449 & 75 Civ 4486. Copies sent to: Robert J. Lewis, General Counsel, Gerald P. Norton, Deputy General Counsel, Gerald Harwood, Ass't General Counsel, & Warren S. Grimes, Att'y, Federal Trade Commission, Washington, D.C. 20580, Shearman & Sterling, 399 Park Ave., New York, N.Y. 10022, Milbank Tweed Hadley & McCloy, 1 Chase Manhattan Plaza, New York, N.Y. 10005, Kirkpatrick Lockhart, Johnson & Hutchinson, 1500 Oliver Bldg., Pittsburgh, Penn., 15222, Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, N. Y. 10005.
2-20-76	Filed transcript of proceedings dated 12-30-75. (Filed in 75 Civ 4486, also entered in 75 Civ 4365, 75 Civ 4417 and 75 Civ 4449)
3-02-76	Filed notice that record on appeal has been Certified & transmitted to the USCA.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By G. HARBISON
Deputy Clerk

(SEAL)

Docket Entries

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORGAN GUARANTY TRUST COMPANY OF NEW YORK and J. P. MORGAN & CO. INCORPORATED *vs.* FEDERAL TRADE COMMISSION, LEWIS A. ENGMAN, Chairman Federal Trade Commission, PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN NYE, Members, Federal Trade Commission and the UNITED STATES OF AMERICA	CIVIL DOCKET 75 CIV. 4486

For plaintiff:
DAVIS, POLK & WARDWELL
1 Chase Manhattan Plaza
New York, N.Y. 10005
tele: Ha 2-3400

Date	Proceedings
09-12-75	(1) Filed complaint and issued summons.
09-16-75	(2) Filed notice of reassignment to Judge Carter. m/n
10-14-75	CASE REASSIGNED TO FRANKEL, J.
10-15-75	Filed Defts Affidavit and Notice of Motion. See *75 CIV 4365*, 4417, 4449 & 4478.
10-15-75	Filed Defts Memorandum of Law. See *75 CIV 4365*, 4417, 4449 & 4478.
10-24-75	Filed stip & order adjourning defts' motion to dismiss complaint from 10-27-75 to 11-17-75, etc. as indicated. So ordered—FRANKEL, J. (filed in 75 Civ. 4365) (Also entered in 75 Civ. 4417—75 Civ. 4449—75 Civ. 4478)
11-12-75	(3) Filed Pltffs memorandum in opposition to Commission's motion to dismiss.
12-1-75	Filed Commission defts reply to pltffs memo in opposition to motion to dismiss. (Ent. in 75 Civ 4365, 4417, 4449, & 4478.) (Filed in 75 Civ. 4365)

Docket Entries

Date	Proceedings
12-31-75	Filed Memorandum & Order #43653. In these consolidated cases, pltff banks, having exhausted their administrative appeals, seek pre-enforcement review of the legality of subpoenas issued by the FTC in connection with its investigation of the energy industry. The FTC's motion to dismiss for lack of subject matter jurisdiction & failure to state a claim is now before the court. For reasons indicated, without retracing all the doctrine explored in the briefs, the court holds that the complts in these cases should be, & they are, dismissed. . . . So Ordered, FRANKEL, J. m/n (Filed in 75 Civ 4365)
1-28-76	Filed pltffs notice of appeal to the USCA from the Order dts 12-31-75, dismissing the complt in this action & in the related actions. Copies sent to: Milbank Tweed Hadley & McCloy, One Chase Manhattan Plaza, New York, N.Y. 10005; Kirkpatrick Lockhart Johnson & Hutchinson, 1500 Oliver Bldg., Pittsburgh, Penn. 15222; Cravath Swaine & Moore, One Chase Manhattan Plaza, New York, N.Y. 10005; Shearman & Sterling, 399 Park Ave., New York, N.Y. & Federal Trade Commission, Wash. D.C. 20580.
2-20-76	Filed transcript of proceedings dated 12-30-75. (Also in 75 Civ 4365, 75 Civ 4417, 75 Civ 4449 & 75 Civ 4478)
*Sep 19-75	Filed Summons with Marshals return. Served FTC by certified mail 9-15-75, Served M. E. Hanford by certified mail on 9-15-75, Also served by certified mail S. Nye, M. J. Thompson, L. A. Engman, P. R. Dixon, Atty. Gen., DC & US Atty, SDNY on 9-15-75.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By G. HARBISON
Deputy Clerk

Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIRST NATIONAL CITY BANK and CITICORP, *Plaintiffs,* *against* FEDERAL TRADE COMMISSION; and LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN [illegible], Members, Federal Trade Com[illegible]ssion, *Defendants.*	75 Civ. (4365)

Plaintiffs complain and allege:

PARTIES, JURISDICTION, VENUE AND NATURE OF ACTION

1. Plaintiff, First National City Bank ("Citibank"), is a national banking association, with its principal place of business in the State of New York, within this District. Citibank is a wholly owned subsidiary of plaintiff Citicorp.

2. Plaintiff Citicorp is a bank holding company incorporated under the laws of Delaware in 1967, with its principal place of business in the State of New York, within this District. Citicorp is registered under the Bank Holding Company Act, 12 U.S.C. §§ 1841 *et seq.*, and Citibank is its principal subsidiary.

3. Defendant, Federal Trade Commission ("FTC"), is a commission created and established by the Federal Trade Commission Act, 15 U.S.C. §§ 41 *et seq.* (the "FTC Act").

4. Defendant, Lewis A. Engman, is the Chairman of the FTC, and defendants Paul Rand Dixon, M. Elizabeth Hanford and Stephen A. Nye are Commissioners of the FTC. All said individual defendants are sued in their official capacities.

5. This action arises under the Fourth and Fifth Amendments to the Constitution of the United States of America, and under the FTC Act, 15 U.S.C. §§ 41 *et seq.*, the Clayton Act, 15 U.S.C. §§ 12 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, the National Bank Act, 12 U.S.C. §§ 21 *et seq.* and the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 *et seq.*

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 2201, and 2202 and 5 U.S.C. §§ 701-706. The amount in controversy exceeds the sum of $10,000, exclusive of interest and costs. There exists between the parties an actual controversy, justiciable in character, in respect of which plaintiffs require a declaration of their rights.

7. Venue of this action is properly laid in this District by virtue of 28 U.S.C. §§ 1391(b) and (e), and said venue is consistent with the mandatory venue of 12 U.S.C. § 94.

8. Plaintiffs bring this action seeking:

(a) review of agency action consisting of an administrative decision and order of the FTC denying a motion by Citicorp to limit or quash a Subpoena Duces Tecum issued by the FTC;

(b) a declaratory judgment that said Subpoena Duces Tecum, as modified by the administrative decision and order, is in excess of the delegated powers of the FTC and beyond its investigatory authority and jurisdiction; and

(c) a stay, an injunction, and such other relief as is appropriate, with respect to the Subpoena Duces Tecum and its enforcement.

FACTS

9. The FTC issued a Subpoena Duces Tecum, dated June 10, 1975 (the "Subpoena"), addressed to the Chairman of Citicorp (who is also the Chairman of Citibank), 399 Park Avenue, New York, N. Y., directing an appearance before William Horne, an Attorney and Examiner of the FTC, on July 18, 1975 at 10:00 A.M. in Washington, D. C. for testimony in connection with the FTC's investigation captioned *Non-Public Investigation* File No. 741-0019, pursuant to FTC Resolutions dated April 16, 1974 and September 12, 1974, and production at that time and place of the books, papers and documents identified in the "Schedule of Documents" attached to the Subpoena. A copy of the Subpoena received by Citicorp on June 12, 1975 (including copies of said FTC Resolutions) is attached hereto as Exhibit A.

10. Citicorp filed a motion, dated July 9, 1975, with the FTC to modify and limit the Subpoena to relevant matters within the jurisdiction and investigatory authority of the FTC, or in lieu thereof to quash the Subpoena.

11. Earlier in the same FTC investigation, in November, 1974, Carl W. Desch, Secretary and Treasurer of Citicorp, and Senior Vice President and Cashier of Citibank, received a subpoena ad testificandum and a subpoena duces tecum, both dated November 5, 1974, directing his appearance, and the production of bank documents, before Mr. Horne on December 3, 1974. A motion was filed on November 21, 1974 to limit or quash that subpoena duces tecum.

12. Mr. Desch appeared in response to the subpoena ad testificandum on December 3, 1974. His appearance and

testimony were made expressly subject to the jurisdictional and legal issues raised by the then pending motion, and he was instructed by counsel not to testify on matters inquired into that were, in the opinion of counsel, within the scope of the issues presented by the motion regarding the jurisdiction of the FTC and the scope of the inquiry. On March 11, 1975, the Bureau of Competition of the FTC advised that the subpoena duces tecum issued on November 5, 1974 to Mr. Desch was withdrawn.

13. No further inquiries regarding the FTC's investigation were received by Citibank or Citicorp, until receipt of the Subpoena on June 12, 1975.

14. The Subpoena called for extensive production of books, records and documents consisting primarily of material of Citibank, Citicorp's principal bank subsidiary, in derogation of the Congressional mandate of 12 U.S.C. § 484 and the authority vested in the Comptroller of the Currency by statute and recognized by Interpretative Rulings such as 12 C.F.R. § 7.6025(a) and (b). Additional material was sought from Citicorp itself.

15. Citicorp produced certain documents already a matter of public record and, by motion dated July 9, 1975 filed with the FTC pursuant to its Procedures and Rules of Practice, challenged the Subpoena, upon the ground that:

> (a) Citibank is a national banking association, subject to the exclusive supervision and comprehensive jurisdiction, regulation and investigatory powers of the Comptroller of the Currency; Citicorp is a registered bank holding company subject to the comprehensive jurisdiction, regulation, and investigatory powers of the Federal Reserve Board; neither Citibank nor Citicorp is subject to the jurisdiction or regulation of the FTC;

(b) the documents demanded by the Subpoena were not specified to be such that could be subject to the investigatory authority of the FTC under §§ 6, 9 and 10 of the FTC Act, and the FTC's Procedures and Rules of Practice;

(c) the bank and bank holding company material sought by the Subpoena was not limited to information necessary to the investigation of a corporation, group of corporations, or industry not engaged, or engaged only incidentally in, banking;

(d) the Subpoena represented an unauthorized and unlawful attempt by the FTC staff to investigate the banking industry, and the limited qualification to the exception of banks from FTC jurisdiction contained in § 6(b) of the FTC Act did not warrant the Subpoena; and

(e) the Subpoena sought irrelevant material and was burdensome and oppressive.

16. Citicorp received no written response from staff counsel to its motion.

17. On August 22, 1975, Citicorp received a decision and order of the FTC, with respect to the July 9 motion, in the form of a letter dated August 21, 1975 from the Acting Secretary of the FTC, a copy of which is attached as Exhibit B (the "Decision and Order").

18. The Decision and Order makes certain specified changes in the "Definitions" and schedule of "Documents to be Produced" in the Subpoena.

19. The scope of the Subpoena, as modified by the Decision and Order, remains beyond the jurisdiction and investigatory authority of the FTC and is in excess of its

delegated powers and contrary to specific prohibitions in the FTC Act, the Clayton Act, the National Bank Act and the Bank Holding Company Act. The changes in the Subpoena effected by the Decision and Order are principally typographical and do not in fact narrow the range of the Subpoena to permissible bounds. The Subpoena, as modified, continues to constitute an unauthorized and unlawful inquiry by the FTC into banks and the banking industry.

20. The confidentiality of the banker-customer relationship is expressly recognized and protected by federal Statutes and Regulations, such as 18 U.S.C. § 1906 (providing criminal sanctions applicable both to public and private examiners for unauthorized disclosure), and 12 C.F.R. § 4.6(b) (requiring that certain disclosures not be made, except as authorized by the Comptroller of the Currency). In contrast, the purported "assurances" of the FTC contained in the Decision and Order (Exhibit B, pp. 7-8) would destroy that confidentiality.

21. Notwithstanding the principle that in order to enforce a subpoena the FTC must invoke the aid of a court, or must request the Attorney General of the United States to apply for a writ of mandamus, the FTC has threatened the plaintiffs with criminal sanctions in the event of their failure to comply with the Subpoena as demanded.

22. The Subpoena, as modified, is a present and continuing threat of irreparable injury to Citibank and Citicorp. Citibank and Citicorp have no prompt, adequate and effective remedy at law and this action is necessary for the protection of their Constitutional and statutory rights.

WHEREFORE, plaintiffs Citibank and Citicorp respectfully pray that this Court:

(i) enter judgment declaring that the decisions and determinations set forth in the FTC's Decision and

Order dated August 21, 1975, and the Subpoena as modified thereby, are contrary to, and in violation of, the Constitution of the United States and applicable law;

(ii) enjoin the defendants from taking any action to enforce the Subpoena, as modified;

(iii) stay, pending final judgment, any action seeking to enforce the Subpoena, or any penalties against plaintiffs for refusal to comply with the Subpoena; and

(iv) grant such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
September 3, 1975

SHEARMAN & STERLING

By JOHN E. HOFFMAN, JR.
A Member of the Firm
Attorneys for Plaintiffs
53 Wall Street
New York, New York 10005
(212) 483-1000

Exhibit A

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

June 11, 1975

WALTER B. WRISTON, Chairman
Citicorp
399 Park Avenue
New York, New York 10022

FILE NO. 741 0019

DEAR SIR:

There is served herewith, by registered mail, a subpoena for appearance at the instance of the Federal Trade Commission at an investigational hearing (or deposition) in connection with the above indicated matter pursuant to the Nonadjudicative Procedures of the Commission (Subpart A of Part 2 of the Commission's Organization, Procedures and Rules of Practice, copy of which is transmitted herewith).

Mr. Allee A. Ramadhan (202) 254-6979 is counsel representing the Commission, and if you have any inquiry concerning this matter, please contact him.

You will take notice that the delivery of this subpoena to you by registered mail is legal service and subjects you to the penalty imposed by law for failure to appear. You are advised that the Commission's Rules require that any motion to limit or quash a subpoena shall be filed within ten days after date of service of the subpoena, or, if the return date is less than ten days after service of the subpoena, within such other time as the Commission may allow. Twenty copies of such motion shall be filed with the Secretary of the Federal Trade Commission and a copy thereof shall at the same time be mailed to the Commission counsel named in the paragraph above.

Exhibit A

You will be entitled to the compensation regularly allowed Government witnesses for attendance. There is enclosed a blank voucher upon which to make your claim; such voucher, as well as the subpoena, must be brought with you.

Do not incur travel expense in obedience to the subpoena in excess of that required from the place to which the subpoena is addressed without first receiving authorization to do so, orally or in writing, from counsel representing the Commission. If you are temporarily located or permanently residing at a place which would require such excess travel expense in order to obey the subpoena, you are directed promptly to notify counsel representing the Commission; and if he fails or refuses to authorize such excess travel expense, you are directed to disregard the subpoena. You are also directed to disregard the subpoena if, for any reason, counsel representing the Commission authorizes you to do so.

By direction of the Commission.

Chas. A. Tobin

CHARLES A. TOBIN
Secretary

Enclosures

NOTICE TO WITNESS

A witness who is served a subpoena to appear at a hearing before a hearing examiner, a duly-authorized investigational hearing, or before any person authorized to take his deposition pursuant to any rule or order of the Federal Trade Commission, shall receive $20.00 for each day's attendance upon certification of the hearing examiner or a duly-authorized hearing officer.

Exhibit A

MILEAGE PAYMENT

A witness residing *outside the city limits of the hearing site* may be paid 10 cents per mile for going from and returning to his place of residence or the address shown in the subpoena. Mileage payments shall be made on the basis of highway distances shown in the short-line nationwide distance tables and maps of the Rand McNally Standard Highway Mileage Guide in paying witnesses in the United States *regardless of the means of travel actually used.* Mileage from residence to the nearest point appearing in the Guide shall be computed via the direct highway route.

The term "residence" is not limited in its application to the legal residence, but includes as well any place *to which the subpoena is sent.* If claim for mileage is made from a place different than that shown in the subpoena, an explanation must accompany the voucher.

PER DIEM ALLOWANCE FOR SUBSISTENCE

Witnesses who attend at points so far removed from their respective residence as to prohibit return thereto from day to day shall be entitled to an additional allowance of $16.00 per day for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance.

The per-diem allowance for subsistence as authorized above is payable *only under the circumstances outlined.* In no case is the $16.00 subsistence allowance authorized when the absence from the residence of the witness is confined to one calendar day.

Per diem allowance may be certified if the distance to be traveled or transportation facilities, or a combination of both would require a witness to leave his residence at an unreasonable hour in order to appear at the time designated. If a witness is discharged late in the afternoon and is unable to return to his home until late at night an additional $16.00 might be certified. The witness must apply to the hearing officer for such certification.

Exhibit A

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

To Walter B. Wriston, Chairman,
Citicorp
399 Park Avenue
New York, New York 10022

You are hereby required to appear before William Horne, an Attorney and Examiner of the Federal Trade Commission, at 2120 L Street, N.W., Room 402 in the City of Washington, D.C. on the 18th day of July, 1975 at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741 0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies of which are attached and made part hereof, for the purposes stated therein.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: See attached "Schedule of Documents".

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has hereunto set his hand and caused the seal of said Federal Trade Commission to be affixed at Washington, D.C., this 10th day of June, 1975.

KENNETH C. ANDERSON

Assistant Director, Bureau of Competition

Exhibit A

SCHEDULE OF DOCUMENTS

Definitions

As used herein:

(a) "Your bank" means the holding company, the bank, subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

(b) "Bank committee" means an organizational entity of your bank charged with any of the following responsibilities:

(i) asset and liability management,

(ii) sources and uses of funds evaluation,

(iii) promotion of quality and return on loan portfolios,

(iv) monitoring loan portfolio exposures,

(v) determinataion and/or coordination of loan pricing, credit and/or marketing policies, and

(vi) budget management and control.

(c) "Board committee" means an entity created, established or designated by the Board of Directors or provided for in the articles of incorporation or by-laws of your bank, whose membership is chosen in whole or in part from among the Board of Directors.

(d) "Credit policies" means courses of action, preferences, conditions, limitations, methods, procedures and practices pertaining to the acquisition, commitment and lending of funds.

(e) "Energy company" means any company that engaged in commercial activities in any of the following energy industries, either directly or through subsidiaries, during the subpoena period or any part thereof: the exploration for, production, transmission by pipeline and/or

sale of crude oil; the refining of crude oil; the transmission by pipeline and/or sale of gasoline or other motor fuels; the exploration for, production, transmission by pipeline, and/or sale of natural gas; the exploration for, mining, processing and/or sale of coal (except when engaged in by companies maintaining captive coal operations exclusively for internal use); the exploration for, development, mining, milling, conversion, enrichment, fabrication, processing, reprocessing and/or sale of nuclear energy resources; and/or the development, construction and sale of nuclear power plants and reactors.

(f) "Energy department" means any organizational unit of your bank specializing in whole or part in any of the energy industries.

(g) "Person" means any natural person, partnership, firm, corporation or association.

(h) "Documents" means all writings of every kind, including letters, telegrams, books, reports, files, records, memoranda, notes, minutes, calendar and diary entries, charts, tabulations, and transcriptions, tape, mechanical and electronic recordings and other memorializations of oral communications which are in the possession, custody or control of your bank. This term also includes reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody or control of your bank. The term documents further includes all punch cards or other cards, tapes or recordings used in data processing, together with the programming instructions and other written materials necessary to understand or use such punch cards, tapes or other recordings.

Subpoena Period: Each paragraph in this Schedule of Documents covers the period from January 1, 1965, to the date of service of this subpoena unless otherwise specified.

Exhibit A

DOCUMENTS TO BE PRODUCED

1. Articles of incorporation, articles of association, and by-laws of your bank.

2. Copies of the 10-K reports which your bank filed with the Securities and Exchange Commission during the subpoena period.

3. Such documents as will show*:

(a) the organization of your bank, including all departments, divisions, committees, working groups and other components;

(b) the names and titles of those persons holding executive positions in your bank, and the names of heads of departments, divisions, committees and headquarters working groups;

(c) statements of goals, strategies, plans of action for the growth, performance and development of your bank during the subpoena period to the extent that they apply to or affect the energy departments.

4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors.

5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period.

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* In lieu of the documents demanded by paragraphs 3(a) and 3(b), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

Exhibit A

6. With respect to each officer and director of an energy company who served on the Board of Directors of your bank or who was considered as a potential member of the Board of Directors during the subpoena period or any part thereof, whether elected to the board or not, provide such documents as will show:

(a) the name of the person,

(b) the company by which the person was employed or on the board of which he served,

(c) energy companies of which the person was a director,

(d) who recommended the person to be considered for membership on the board,

(e) conversations, discussions and other communications, whether written or oral among the officers and employees, committees or other organizational units of your bank regarding the evaluation of the person as a potential member of the Board of Directors of your bank,

(f) the reasons for the decision by your bank either to offer or decline to offer the person a membership on the Board of Directors of your bank,

(g) the date of the decision by your bank regarding whether to offer said person a membership on the Board of Directors,

(h) conversations, discussions or other communications between your bank and each potential director and between your bank and the energy company with which the potential director was affiliated regarding his membership on the bank Board of Directors, and

(i) files of the chairman of the Board of Directors, president, executive vice president and senior vice

presidents of your bank regarding the selection of persons to serve on its Board of Directors.

7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors during the subpoena period which:

(a) describe the duties and obligations of members of the Board of Directors, and

(b) describe the structure, policies or operations of your bank.

8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period:

(a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

9. With respect to each officer and employee of your bank who served or was asked to serve as a director of an energy company during the subpoena period or any part thereof, provide such documents as will show:

(a) the name of the person,

(b) the name(s) of the energy company(ies) on whose board(s) of directors he served or was asked to serve,

(c) the date(s) he joined the board(s) of the energy company(ies) or declined such service,

(d) the request(s) by the officer or employee for permission of your bank to serve on the board(s) of directors of the energy company(ies),

(e) conversations, discussions and other communications whether written or oral, among the officers and employees of your bank, or committees or other organizational units of your bank regarding the evaluation of the officer's or employee's request for approval of his service on another board of directors,

(f) the reasons for the decision of your bank to approve or disapprove the request, and if your bank gave its approval, the communication of that decision internally to the staff of your bank, and

(g) conversations, discussions or other communications between your bank and the energy company regarding the membership of said officer or employee on its board of directors.

10. Copies of all documents which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

11. With regard to meetings of the Board of Directors, the Executive Committee of the Board and the Examining Committee of the Board of your bank supply for the subpoena period:

(a) copies of agenda, and

(b) copies of all documents memorializing deliberations of their meetings at which directors who were simultaneously directors of energy companies were present.

Exhibit A

12. With regard to all credit policies of your bank which were applicable to energy companies during the subpoena period or any part thereof, provide copies of energy department records and files (exclusive of customer files), copies of all communications among and between the Board of Directors, Board committees, Bank committees, energy departments, bank officers and bank directors and copies of any similar such documents relating or referring to:

(a) allocations and exposures by industry group, sub-group, purpose or type of loan;

(b) budget allotments and estimates of loan demand for any of the energy industries and any energy companies;

(c) portfolio growth and contraction, priorities among customers and recruitment of new customers; and,

(d) distinctions among firms by size, creditworthiness, relationship to your bank, geographic location and other business characteristics.

13. With regard to any energy department(s) of your bank such documents as will show for the subpoena period:

(a) the date of its formation;

(b) the reasons for its formation;

(c) a description of its purpose and functions;

(d) the names of bank officers and employees who served as members thereof, and their account assignments;

(e) recruitment and prospect lists of energy companies;

(f) annual budget commitments and estimates of loan demand for energy companies (whether or not their accounts are maintained in the energy departments);

(g) credit authorities of corporate lending officers;

(h) guidelines and criteria applicable to energy companies used in rating creditworthiness;

(i) copies of all reports, evaluations, transcripts and other documents submitted by McKinsey & Co. or other such management consultant firms or produced as the result of in house efforts dealing with the organization, reorganization, operations, policies and procedures of any of the energy departments; the organization, reorganization, operations, policies and procedures of your bank if they apply to or affect any of the energy departments or their interaction with other organizational units; and the role, participation and function of directors.

14. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply documents sufficient to identify for each year of the subpoena period:

(a) total credit commitments and arrangements extended;

(b) average and maximum credit actually used;

(c) general purpose, type and significant terms of each credit arrangement involving amounts in excess of $1,000,000*;

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* In lieu of the documents demanded by paragraph 14(c), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

(d) average and maximum time and demand deposits and balances maintained by the listed companies;

(e) other commercial, trust and operating services performed for the listed companies, the dollar value charged for each such service and the dollar value to your bank attributed to each such service provided by your bank.

15. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply:

(a) current desk files of lending officers;

(b) the following parts of credit files for the subpoena period:

(i) documents which are the work product of bank officers and employees relating or referring to meetings, negotiations, conversations and other business contacts with or about customers and any such documents consisting of impressions, comments, analyses and evaluations of customers or transactions with customers (both proposed and consummated),

(ii) correspondence and credit inquiries, and

(iii) commitment memoranda and executive (or other) committee approvals; and

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated business transactions

during the subpoena period with any of the companies listed in the Appendix.

APPENDIX

Anaconda Co.

Atlantic Richfield Co.

Autotronic Systems, Inc.

Belco Petroleum Corp.

Commonwealth Oil & Refining Co.

Coastal States Gas Co.

Exxon Corp.

Gulf Oil Corp.

Marathon Oil Co.

Mobil Oil Corp.

New England Petroleum Corp.

Phillips Petroleum Co.

Panhandle Eastern Pipeline Co.

Standard Oil Co. of California

Standard Oil Co. of Indiana

Sun Oil Co.

Texaco, Inc.

Union Pacific Corp.

Resolution Directing Use of Compulsory Process in Nonpublic Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

FILE No. 741 0019

NATURE AND SCOPE OF INVESTIGATION:

To determine the extent and effects of direct and indirect interlocking directorates, and other interlocking personnel and business relationships among domestic petroleum companies and between such companies and financial institutions and to determine whether or not such interlocking relationships may be in violation of Section 8 of the Clayton Act or may result in unfair methods of competition or unfair acts or practices within the meaning of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

AUTHORITY TO CONDUCT INVESTIGATION:

Sections 6, 9, and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice 16 C.F.R. 1.1, et seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: September 12, 1974

A-35

Resolution Directing Use of Compulsory Process in Non-public Investigations

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the natural gas industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and a report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

Resolution Directing Use of Compulsory Process in Non-public Investigations

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE NO. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the coal industry and on all relevant activities of each segment of that industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

Resolution Directing Use of Compulsory Process in Non-public Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the nuclear energy industry and on all relevant activities of each segment of that industry, including the production, sale and utilization of nuclear materials, the manufacture, sale, and utilization of nuclear power plant equipment, and other activities associated therewith, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

Exhibit B

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

August 21, 1975

ALAN H. WRIGHT, ESQ.
Messrs. Shearman & Sterling
53 Wall Street
New York, New York 10005

Re: Subpoena Duces Tecum Issued to
Citicorp on June 10, 1975
File No. 741 0019
Unnamed Energy Companies

DEAR MR. WRIGHT:

This is in response to the motion of Citicorp to limit or quash the above-described subpoena. The motion is hereby granted in part and denied in part.

The Commission has decided to limit the subpoena issued to Citicorp in the following respects:

1. Under the section designated "*Definitions,*" Part (a) is modified to read:

> (a) "Your bank" means Citicorp, First National City Bank, venture capital and equipment leasing subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

2. Part (h) is modified by adding after the last sentence of the definition of "Documents" the following sentence:

> Documents refers only to those located in the United States.

Exhibit B

3. Under the section designated "DOCUMENTS TO BE PRODUCED," Part (4) is modified to read:

> 4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors, if applicable to the selection of persons who were directors or officers of energy companies.

4. Part (5) is modified to read:

> 5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period, if used in the consideration of a person who was a director or officer of an energy company.

5. Part (7) is modified to read:

> 7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors who were simultaneously directors or officers of energy companies which:
>
> (a) describe the duties and obligations of members of the Board of Directors, and
>
> (b) describe the structure, policies or operations of your bank.

6. Part (8) is modified to read:

> 8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period if applicable to service on the board of an energy company:
>
> (a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

7. Part (10) is modified to read:

10. Copies of all documents, in the nature of summaries, reviews and digests, which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

8. Part (15)(c) is modified to read:

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated credit transactions during the subpoena period with any of the companies listed in the Appendix involving amounts in excess of $1,000,000.

In all other respects, the Commission has denied the motion, having made the following determinations with respect to the issues you have raised:

1. The Trans-Alaska Pipeline Authorization Act, Pub. L. 93-153, 87 Stat. 576 (1973) amended Section 6 of the Federal Trade Commission Act (15 U.S.C. § 46) to provide that the Commission may investigate banks "to the extent that such action is necessary to the investigation of any . . .

industry which is not engaged . . . in banking.'' The amendment grants the Commission investigatory jurisdiction over banks with regard to all subjects ''necessary'' to the resolution of issues in an investigation of an industry not engaged in banking. The effect of the amendment is to define the permissible scope of an investigation touching on banks and to require that the subject matter of such an inquiry arise out of a matter properly under investigation—in this instance, competitive conditions in the energy industry.

As part of the Commission's Energy Study, its staff is examining the effects of interlocking directorates between energy companies and banks on competitive conditions in the energy industry. Since the availability of credit is highly important to the capital-intensive energy sector, the Commission's staff is investigating the possibility that interlocked energy companies or some segment of the industry with which they are identified receive preference in obtaining credit; the possibility that interlocked energy companies use their position to deny or limit credit available to their competitors or to a segment of the industry to which they are antagonistic; the possibility that interlocked energy companies have access to confidential credit file data of competitors; and the possibility that interlocked energy companies influence bank credit policies to encourage or inhibit various alternative energy sources and industry structures.

Necessary to the resolution of the investigatory issues just described is information concerning Citicorp's allocation of credit among energy companies represented on its board and those not represented, credit policies which dictate such allocation, reasons for choosing directors affiliated with energy companies, and reliance on those directors' advice and participation. Therefore, the Commission may properly compel production of the subpoenaed information in order to complete its inquiry into competitive conditions in the energy industry.

Exhibit B

2. The nature and purpose of the investigation of an industry subject to the Commission's jurisdiction determines the permissible scope of the related investigation of a bank. Once this scope is established and the pertinent subject matter delineated, the Commission may demand the production of any documents reasonably relevant to that subject matter. *Adams* v. *FTC*, 296 F.2d 861, 866 (8th Cir. 1961), *cert. denied* 369 U.S. 864 (1962); *FTC* v. *Green*, 252 F. Supp. 153, 156 (S.D.N.Y. 1966); see also, *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950). Therefore, the standard of relevance which applies to subpoenas issued to banks does not differ from the standard applicable to nonbanking corporations subject to the Commission's jurisdiction.

In this context, the Commission's investigative authority, as described by the Supreme Court in *United States* v. *Morton Salt Co., supra,* is extensive:

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has the power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend upon a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." 338 U.S. at 642-43.

The Court continued:

> "Even if one were to regard the request for information in this case as caused by nothing more than

official curiosity, nevertheless law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." 338 U.S. at 652.

3. The documents sought by the subpoena, as limited above, are both relevant and necessary to the exploration of matters within the permissible scope of the Commission's investigation into competitive conditions in the energy industry.

All of the subpoenaed documents are relevant in one or more of the following respects:

First, relevant and necessary to the investigation are documents concerning the formation and purposes of the interlocking arrangements and the participation and influence of interlocked directors. Specifications 4, 5, 6, 7, 8, 9 and 11 are among those demanding this type of information.

Second, relevant and necessary to the investigation are documents concerning a bank's credit policies applicable to energy companies. These may reveal distinctions made between interlocked and non-interlocked companies. Specifications 3(c), 11, 12, and 13(e), (f) and (i) are among those demanding this type of information.

Third, relevant and necessary to the investigation are documents concerning a bank's dealings with energy companies. These may be used to identify and compare factors which determine which companies receive credit, on what terms and in which amounts. Specifications 3(c), 10, 14 and 15 are among those demanding this type of information.

In addition to these three substantive areas, certain information concerning a bank's organization and operating procedures is relevant and necessary to the investigation. Knowledge of these procedures is necessary to determining

how directors' influence may be brought to bear within the bank. Specifications 1, 2, 3 and 13(a)-(d), (g)-(i) are among those demanding this type of information.

4. The Commission has examined the specifications of the subpoena and finds that, as limited above, the subpoena is neither overly broad nor unduly burdensome. Many of the specifications are expressly limited to documents relevant to interlocked directors or interlocked energy companies. These are circumscribed classes. Other items seek information regarding specific policies which apply to energy companies or with respect to a limited list of energy companies.

While the subpoena demands the production of a substantial number of documents, this results from the extent and size of the bank's operations rather than from any undue demands of the subpoena. Inconvenience is relative and must be considered in relation to the size of the subpoenaed party. *Application of Radio Corp. of America,* 13 F. R. D. 167, 172 (S.D.N.Y. 1952). Moreover, breadth alone is not sufficient justification for refusing enforcement of a subpoena. *Adams* v. *FTC, supra* at 867. The test to be applied to claims of burdensomeness is not whether a burden has been imposed, but rather whether the subpoena is so unduly burdensome that compliance with it would clog the conduct of business. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186 (1945); *Genuine Parts Co.* v. *FTC,* 313 F. Supp. 855, 859 (N.D. Ga. 1969), *aff'd.* 445 F.2d 1382 (5th Cir. 1971). The subpoenaed party bears the burden of proving undue burdensomeness. *FTC* v. *Standard American, Inc.,* 306 F.2d 231, 235 (3rd. Cir. 1962). Nothing in the motion to quash persuades the Commission that production of the subpoenaed material would unduly disrupt your client's business. Furthermore, the Commission's own examination of the subpoena, as limited, discloses no undue burden.

Exhibit B

5. In order to minimize the burden of production pursuant to the subpoena, the officer of the Commission who issued it is authorized to establish arrangements for Commission personnel to review and, as necessary, reproduce the subpoenaed documents on your client's premises. See § 2.7(a) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.7(a).

6. Your request for oral argument is denied. There is no requirement that an opportunity for oral argument be provided in connection with a motion to quash an investigational subpoena, and the Commission has determined that oral argument will not be necessary in this instance.

Although you have not raised the attorney-client privilege as an objection to the subpoena, the Commission recognizes the possibility that the specifications may encompass certain privileged communications between attorney and client. Therefore, the Commission has determined that such communications need not be produced. However, in lieu of producing documents claimed to constitute privileged attorney-client communications, your client must submit a schedule identifying each document withheld under claim of such privilege and setting forth, for each such document, the reasons for the application of the privilege.

The Commission further recognizes that many of the subpoenaed documents may be regarded as sensitive business information. Therefore, the Commission has decided to grant your client the following assurances with respect to the contents of all documents responsive to subpoena specifications 3 through 15, inclusive:

> 1. Pursuant to the Commission's tentative determination of confidentiality, the Secretary of the Commission will deny any request made under the Freedom of Information Act for access to any of the protected documents or to any copies, tabulations, digests, or summaries thereof prepared by the Commission, its staff or consultants.

2. In the event an appeal is taken from the Secretary's denial of such an access request, your client will be promptly notified of the pendency of such appeal and afforded seven days within which to file a written response with the Commission.

3. Thereafter, if the Commission determines that any or all of the documents to which access is sought are not exempt from mandatory disclosure pursuant to the Freedom of Information Act, or that they are exempt but the Commission will exercise its discretion to release them, the Commission will immediately advise your client of its decision and further advise it that the documents will be delivered to the requesting party within five days.

4. The Commission will not release upon its own motion any of the protected documents or their contents to any person outside the employ of the Commission, without first giving your client ten days' notice of its intention to do so.

The foregoing assurances will not apply to the Commission's furnishing information in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process. In the event of such release, the Congressional committee or subcommittee or the court will be advised that your client considers the material to be confidential, and your client will, if possible, be afforded prior notice.

The Commission further exempts from the foregoing assurances its furnishing the documents to an outside consultant retained by the Commission. However, only a consultant who has agreed not to release the documents may be given access to them.

The foregoing assurances shall be effective for a period of three years from the date of this letter, at the end of which time the commitment may be extended upon a showing of justification.

Exhibit B

The foregoing assurances do not apply to any information which (1) is now in the public domain; (2) enters the public domain from a source other than the Commission or its employees; (3) was in the Commission's possession prior to disclosure to the Commission pursuant to this subpoena; or (4) is supplied to the Commission or its employees by a third party lawfully in possession thereof. Nothing in the foregoing sentence, however, will constitute a waiver by your client of any restrictions imposed by law on the Commission's use of any such information, however obtained.

The foregoing assurances are given with the understanding that in the event of issuance of an adjudicative complaint in this matter, the confidential status of the specified information and the limitations on its disclosure shall be governed solely by the applicable provisions of the Commission's Rules of Practice, Part 3—Rules of Practice for Adjudicative Proceedings.

The Commission having considered and denied the motion of Citicorp, except for the limitations hereinabove allowed, full compliance with the subpoena, as modified, is hereby ordered. Return shall be made on the subpoena at the hour and place specified in the subpoena on September 12, 1975.

By direction of the Commission.

VIRGINIA M. HARDING,
Acting Secretary

REGISTERD MAIL
RETURN RECEIPT REQUESTED

cc: Walter B. Wriston, Chairman
Citicorp
399 Park Avenue
New York, New York 10022

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) and THE CHASE MANHATTAN CORPORATION,

Plaintiffs,

against

FEDERAL TRADE COMMISSION; LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members, Federal Trade Commission,

Defendants.

Plaintiffs, by their attorneys, Milbank, Tweed, Hadley & McCloy, complaining of defendants, allege:

1. This action arises under §§ 6, 9 and 10 of the Federal Trade Commission Act (15 U.S.C. §§ 46, 49 and 50) and under the Fourth Amendment and the Due Process Clause of the Fifth Amendment to the Constitution of the United States. The amount in controversy exceeds $10,000, exclusive of interest and costs, and the Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, 2201 and 2202 and 5 U.S.C. § 701 *et seq.*

2. Plaintiff The Chase Manhattan Bank (National Association) (hereinafter "the Bank") is a national banking association chartered under the National Bank Act (12 U.S.C. §§ 21 *et seq.*), with its principal place of business at 1 Chase Manhattan Plaza, New York, New York.

3. Plaintiff The Chase Manhattan Corporation (hereinafter "Chase") is a bank holding company incorporated under the laws of Delaware and registered under the Bank Holding Company Act (12 U.S.C. §§ 1841 *et seq.*), with its principal place of business at 1 Chase Manhattan Plaza, New York, New York. The Bank is Chase's principal subsidiary.

4. Defendant Federal Trade Commission (hereinafter "the Commission") is an administrative agency of the United States generally charged with the prevention of unfair methods of competition and unfair or deceptive acts or practices in interstate commerce by persons other than banks and common carriers.

5. Defendant Lewis A. Engman is the Chairman, and defendants Paul Rand Dixon, M. Elizabeth Hanford and Stephen A. Nye are members of the Commission, and are sued in their official capacities.

6. On June 13, 1975, Chase received a subpoena duces tecum, dated June 10, 1975 and issued by the Commission in connection with an investigation of the energy industry entitled "Non-Public Investigation File No. 741 0019." A copy of the subpoena is annexed as Exhibit 1.

7. The subpoena demanded the production of vast quantities of records falling within fifty-five categories and subcategories of documents, specified in its nine-page, single-spaced "Schedule of Documents." It encompassed virtually all bank files, wherever located, including "current desk files of lending officers," relating to each of eighteen energy companies listed in a separate "Appendix." The subpoena covered the period from January 1, 1965 to the date of its service, called for records of "the holding company, the bank, subsidiaries, successors and predecessors of each and

any person acting or purporting to act in their behalf," and, with few exceptions, framed its demands in terms of "documents as will show," "documents sufficient to identify," or "documents relating or referring to" various categories of information and transactions.

8. On July 7, 1975, Chase made a motion before the Commission to limit or quash the subpoena on the ground that the Commission lacks jurisdiction to issue it, and on the further ground that the subpoena was so broad that compliance with its demands would constitute an undue burden substantially disrupting the plaintiffs' banking operations. A copy of Chase's motion, with supporting affidavits and exhibits, is annexed as Exhibit 2.

9. By order dated August 21, 1975, the Commission denied Chase's motion to quash the subpoena, modified it in certain minor respects, and ordered substantial compliance by September 12, 1975. A copy of the order is annexed as Exhibit 3.

10. The Commission lacks jurisdiction to issue the subpoena, as modified, because such action is not "necessary" to an investigation of the energy industry (15 U.S.C. § 46 proviso) and because the Commission otherwise lacks authority to investigate banks (15 U.S.C. § 46(a) and (b)). In addition, the subpoena is so vague and general, and the documents sought are so voluminous, that compliance with the subpoena's demands would disrupt the plaintiffs' banking operations and would impose an unreasonable and oppressive burden upon them.

11. The Commission has threatened to impose the penalties prescribed by § 10 of the Federal Trade Commission Act (15 U.S.C. § 50) if Chase fails to comply with the subpoena as modified.

12. The Commission's order denying Chase's motion to quash the subpoena and requiring Chase to comply with

the subpoena as modified exposes Chase to civil and criminal sanctions without an opportunity otherwise to obtain judicial review, thus presenting a "case of actual controversy" within the meaning of the Declaratory Judgment Act (28 U.S.C. §§ 2201 *et seq.*).

13. The Commission's order adversely affects and aggrieves Chase by requiring Chase either to comply with the subpoena, at unreasonable expense and interference with the plaintiffs' banking operations, or to incur severe penalties for non-compliance. The Commission having issued a final order denying Chase's motion to quash the subpoena, there is no other adequate remedy in a court available to Chase.

WHEREFORE, plaintiffs respectfully pray that this Court:

1. enter judgment pursuant to 28 U.S.C. §§ 2201 *et seq.* declaring that defendants' issuance of the subpoena duces tecum dated June 10, 1975 exceeds the defendants' statutory and constitutional authority, or alternatively,

2. enter judgment pursuant to 5 U.S.C. §§ 701 *et seq.* declaring that defendants' issuance of the subpoena exceeds the defendants' statutory and constitutional authority, or alternatively,

3. enter judgment pursuant to the Court's general equitable powers declaring that defendants' issuance of the subpoena exceeds the defendants' statutory and constitutional authority,

4. enjoin the defendants from taking any action to enforce the subpoena as modified by the order of August 21, 1975, or alternatively,

5. enter judgment limiting the subpoena to documents necessary to the Commission's investigation, within the scope of its jurisdiction, and not unduly burdensome to produce,

6. stay, pending final judgment, any action that may be brought to enforce the subpoena or the order of August 21, 1975, and any penalties against plaintiffs for refusal to comply therewith, and

7. grant such other and further relief as may be just and equitable.

MILBANK, TWEED, HADLEY & MCCLOY

By EDWARD J. REILLY
A Member of the Firm
1 Chase Manhattan Plaza
New York, N. Y. 10005
Attorneys for Plaintiffs

Exhibit 1

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

To DAVID ROCKEFELLER, Chairman,
Chase Manhattan Corporation,
One Chase Manhattan Plaza,
New York, New York 10005

You are hereby required to appear before Allee Ramadhan, an Attorney and Examiner of the Federal Trade Commission, at 2120 L Street, N.W., Room 402 in the City of Washington, D.C. on the 18th day of July, 1975, at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741 0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies of which are attached and made part hereof, for the purposes stated therein.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: See attached "Schedule of Documents"

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has hereunto set his hand and caused the seal of said Federal Trade Commission to be affixed at Washington, D.C., this 10th day of June, 1975

KENNETH C. ANDERSON
Assistant Director, Bureau of Competition

Exhibit 1

SCHEDULE OF DOCUMENTS

Definitions

As used herein:

(a) "Your bank" means the holding company, the bank, subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

(b) "Bank committee" means an organizational entity of your bank charged with any of the following responsibilities:

(i) asset and liability management,

(ii) sources and uses of funds evaluation,

(iii) promotion of quality and return on loan portfolios,

(iv) monitoring loan portfolio exposures,

(v) determination and/or coordination of loan pricing, credit and/or marketing policies, and

(vi) budget management and control.

(c) "Board committee" means an entity created, established or designated by the Board of Directors or provided for in the articles of incorporation or by-laws of your bank, whose membership is chosen in whole or in part from among the Board of Directors.

(d) "Credit policies" means courses of action, preferences, conditions, limitations, methods, procedures and practices pertaining to the acquisition, commitment and lending of funds.

(e) "Energy company" means any company that engaged in commercial activities in any of the following energy industries, either directly or through subsidiaries, dur-

ing the subpoena period or any part thereof: the exploration for, production, transmission by pipeline and/or sale of crude oil; the refining of crude oil; the transmission by pipeline and/or sale of gasoline or other motor fuels; the exploration for, production, transmission by pipeline, and/or sale of natural gas; the exploration for, mining, processing and/or sale of coal (except when engaged in by companies maintaining captive coal operations exclusively for internal use); the exploration for, development, mining, milling, conversion, enrichment, fabrication, processing, reprocessing and/or sale of nuclear energy resources; and/or the development, construction and sale of nuclear power plants and reactors.

(f) "Energy department" means any organizational unit of your bank specializing in whole or part in any of the energy industries.

(g) "Person" means any natural person, partnership, firm, corporation or association.

(h) "Documents" means all writings of every kind, including letters, telegrams, books, reports, files, records, memoranda, notes, minutes, calendar and diary entries, charts, tabulations, and transcriptions, tape, mechanical and electronic recordings and other memorializations of oral communications which are in the possession, custody or control of your bank. This term also includes reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody or control of your bank. The term documents further includes all punch cards or other cards, tapes or recordings used in data processing, together with the programming instructions and other written materials necessary to understand or use such punch cards, tapes or other recordings.

Exhibit 1

Subpoena Period: Each paragraph in this Schedule of Documents covers the period from January 1, 1965, to the date of service of this subpoena unless otherwise specified.

DOCUMENTS TO BE PRODUCED

1. Articles of incorporation, articles of association, and by-laws of your bank.

2. Copies of the 10-K reports which your bank filed with the Securities and Exchange Commission during the subpoena period.

3. Such documents as will show*:

(a) the organization of your bank, including all departments, divisions, committees, working groups and other components;

(b) the names and titles of those persons holding executive positions in your bank, and the names of heads of departments, divisions, committees and headquarters working groups;

(c) statements of goals, strategies, plans of action for the growth, performance and development of your bank during the subpoena period to the extent that they apply to or affect the energy departments.

4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors.

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* In lieu of the documents demanded by paragraphs 3(a) and 3(b), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period.

6. With respect to each officer and director of an energy company who served on the Board of Directors of your bank or who was considered as a potential member of the Board of Directors during the subpoena period or any part thereof, whether elected to the board or not, provide such documents as will show:

(a) the name of the person,

(b) the company by which the person was employed or on the board of which he served,

(c) energy companies of which the person was a director,

(d) who recommended the person to be considered for membership on the board,

(e) conversations, discussions and other communications, whether written or oral among the officers and employees, committees or other organizational units of your bank regarding the evaluation of the person as a potential member of the Board of Directors of your bank,

(f) the reasons for the decision by your bank either to offer or decline to offer the person a membership on the Board of Directors of your bank,

(g) the date of the decision by your bank regarding whether to offer said person a membership on the Board of Directors,

(h) conversations, discussions or other communications between your bank and each potential director and between your bank and the energy company with which the potential director was affiliated regarding his membership on the bank Board of Directors, and

(i) files of the chairman of the Board of Directors, president, executive vice president and senior vice presidents of your bank regarding the selection of persons to serve on its Board of Directors.

7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors during the subpoena period which:

(a) describe the duties and obligations of members of the Board of Directors, and

(b) describe the structure, policies or operations of your bank.

8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period:

(a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

9. With respect to each officer and employee of your bank who served or was asked to serve as a director of an energy company during the subpoena period or any part thereof, provide such documents as will show:

(a) the name of the person,

(b) the name(s) of the energy company(ies) on whose board(s) of directors he served or was asked to serve,

(c) the date(s) he joined the board(s) of the energy company(ies) or declined such service,

(d) the request(s) by the officer or employee for permission of your bank to serve on the board(s) of directors of the energy company(ies),

(e) conversations, discussions and other communications whether written or oral, among the officers and employees of your bank, or committees or other organizational units of your bank regarding the evaluation of the officer's or employee's request for approval of his service on another board of directors,

(f) the reasons for the decision of your bank to approve or disapprove the request, and if your bank gave its approval, the communication of that decision internally to the staff of your bank, and

(g) conversations, discussions or other communications between your bank and the energy company regarding the membership of said officer or employee on its board of directors.

10. Copies of all documents which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

11. With regard to meetings of the Board of Directors, the Executive Committee of the Board and the Examining

Committee of the Board of your bank supply for the subpoena period:

(a) copies of agenda, and

(b) copies of all documents memorializing deliberations of their meetings at which directors who were simultaneously directors of energy companies were present.*

12. With regard to all credit policies of your bank which were applicable to energy companies during the subpoena period or any part thereof, provide copies of energy department records and files (exclusive of customer files), copies of all communications among and between the Board of Directors, Board committees, Bank committees, energy departments, bank officers and bank directors and copies of any similar such documents relating or referring to:

(a) allocations and exposures by industry group, sub-group, purpose or type of loan;

(b) budget allotments and estimates of loan demand for any of the energy industries and any energy companies;

(c) portfolio growth and contraction, priorities among customers and recruitment of new customers; and,

(d) distinctions among firms by size, creditworthiness, relationship to your bank, geographic location and other business characteristics.

13. With regard to any energy department(s) of your bank such documents as will show for the subpoena period:

(a) the date of its formation;

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* Exclude from the definition of documents, for item 11(b), typewritten minutes.

(b) the reasons for its formation;

(c) a description of its purpose and functions;

(d) the names of bank officers and employees who served as members thereof, and their account assignments;

(e) recruitment and prospect lists of energy companies;

(f) annual budget commitments and estimates of loan demand for energy companies (whether or not their accounts are maintained in the energy departments);

(g) credit authorities of corporate lending officers;

(h) guidelines and criteria applicable to energy companies used in rating creditworthiness;

(i) copies of all reports, evaluations, transcripts and other documents submitted by management consultant firms or produced as the result of in house efforts dealing with the organization, reorganization, operations, policies and procedures of any of the energy departments; the organization, reorganization, operations, policies and procedures of your bank if they apply to or affect any of the energy departments or their interaction with other organizational units; and the role, participation and function of directors.

14. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply documents sufficient to identify for each year of the subpoena period:

(a) total credit commitments and arrangements extended;

(b) average and maximum credit actually used;

(c) general purpose, type and significant terms of each credit arrangement involving amounts in excess of $1,000,000*;

(d) average and maximum time and demand deposits and balances maintained by the listed companies;

(e) other commercial, trust and operating services performed for the listed companies, the dollar value charged for each such service and the dollar value to your bank attributed to each such service provided by your bank.

15. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply:

(a) current desk files of lending officers;

(b) the following parts of credit files for the subpoena period:

(i) documents which are the work product of bank officers and employees relating or referring to meetings, negotiations, conversations and other business contacts with or about customers and any such documents consisting of impressions, comments, analyses and evaluations of customers or transactions with customers (both proposed and consummated),

(ii) correspondence and credit inquiries, and

(iii) commitment memoranda and executive (or other) committee approvals; and

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* In lieu of the documents demanded by paragraph 14(c), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated business transactions during the subpoena period with any of the companies listed in the Appendix.

APPENDIX

American Smelting & Refining Co.

Anaconda Co.

Atlantic Richfield Co.

Clark Oil & Refining Corp.

Crown Central Petroleum Corp.

Earth Resources Co.

Exxon Corp.

Energy Coal Co.

Forest Oil Co.

Marathon Oil Co.

Mobil Oil Corp.

Mitchell Energy & Development Corp.

Northeast Petroleum Industries

Occidental Petroleum Corp.

Phillips Petroleum Co.

Southern Natural Resources, Inc.

Standard Oil Co. of Indiana

United Refining Co.

Resolution Directing Use of Compulsory Process in Nonpublic Investigation

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

FILE No. 741 0019

NATURE AND SCOPE OF INVESTIGATION:

To determine the extent and effects of direct and indirect interlocking directorates, and other interlocking personnel and business relationships among domestic petroleum companies and between such companies and financial institutions and to determine whether or not such interlocking relationships may be in violation of Section 8 of the Clayton Act or may result in unfair methods of competition or unfair acts or practices within the meaning of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice 16 C.F.R. 1.1, et seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: September 12, 1974

A-65

Resolution Directing Use of Compulsory Process in Non-Public Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the natural gas industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and a report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

Resolution Directing Use of Compulsory Process in Non-Public Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the coal industry and on all relevant activities of each segment of that industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act. 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

Resolution Directing Use of Compulsory Process in Non-Public Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the nuclear energy industry and on all relevant activities of each segment of that industry, including the production, sale and utilization of nuclear materials, the manufacture, sale, and utilization of nuclear power plant equipment, and other activities associated therewith, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

Exhibit 2

Motion by The Chase Manhattan Corporation to Limit or Quash Subpoena Duces Tecum

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL TRADE COMMISSION

In the Matter of

NON-PUBLIC INVESTIGATION
File No. 741 0019

On the affidavits of Michael E. Carlson and Edward J. Reilly, sworn to July 3, 1975, Thomas D. Hill, Jr., sworn to July 3, 1975, William W. Higgins, sworn to July 1, 1975, Stanley J. Lewand, sworn to June 30, 1975 and Donald O. Cameron, sworn to June 27, 1975, and the Commission's records in this investigation, The Chase Manhattan Corporation hereby moves pursuant to Rule 2.7(b) of the Commission's Rules of Practice to limit or quash a subpoena duces tecum dated June 10, 1975 on the grounds that the Commission lacks jurisdiction to issue the subpoena because the documents sought are not necessary to its investigation, and the subpoena is so vague and overbroad that compliance with its unreasonable demands would constitute an undue burden.

Dated: New York, N. Y.
July 7, 1975

MILBANK, TWEED, HADLEY & MCCLOY

By EDWARD J. REILLY
A Member of the Firm
Attorneys for The Chase Manhattan Corporation
1 Chase Manhattan Plaza
New York, N. Y. 10005

Affidavit in Support of Chase Manhattan's Motion to Limit or Quash a Subpoena Duces Tecum

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL TRADE COMMISSION

In the Matter of

NON-PUBLIC INVESTIGATION
FILE NO. 741 0019

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

MICHAEL E. CARLSON, being duly sworn, says:

1. I am the Secretary of The Chase Manhattan Corporation (hereinafter referred to as "Chase") and of its principal subsidiary The Chase Manhattan Bank (National Association) (the "Bank"). I also serve as a member of the board of directors of the Bank.

2. I make this affidavit in support of Chase's motion, pursuant to Rule 2.7(b) of the Commission's Rules of Practice, to limit or quash a subpoena duces tecum dated June 10, 1975, and issued by an Assistant Director of the Bureau of Competition.

3. The subpoena (a copy of which is annexed hereto as Exhibit A) purports to require production of fifty-five categories and subcategories of documents from the files of the bank, including:

> "Such documents as will show ... the organization of your bank, including all departments, divisions, committees, working groups and other components,"

> "all documents which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated . . . during the subpoena period,"

and, for each of eighteen energy companies listed in an Appendix to the subpoena, virtually all bank files, wherever located, including the "current desk files of lending officers."

4. The subpoena covers the period from January 1, 1965 to the date of its service, encompasses records of "the holding company, the bank, subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf," and (with rare exception) frames its demands in terms of "documents as will show," "documents sufficient to identify" or "documents relating or referring to" various categories of information and transactions.

5. The volume of documents called for by this subpoena is truly staggering. Although I do not directly maintain the bulk of the records which it describes, I can estimate that paragraph 10 alone encompasses millions of pages of writings. Submitted herewith are the affidavits of various bank officers describing more particularly the extraordinary burden which compliance with this subpoena would necessarily entail.

6. Chase is a large bank holding company with operations around the world conducted through subsidiaries and associate banks and other institutions in scores of countries. Submitted herewith as Exhibit B is a copy of its 1974 Annual Report, indicating (at pp. 47-48) the scope of its overseas operations. Annexed hereto as Exhibit C is a

partial listing of its domestic subsidiaries which fall within the scope of the subpoena's definition of "your bank."

7. Even so seemingly limited a demand as that set forth in paragraph 1 of the subpoena, calling for certificates and by-laws of all Chase subsidiaries*, would require the dedication of scores of man-hours of work merely to respond for Chase's current subsidiaries, much less the "predecessors of each and any person acting or purporting to act in their behalf." Most of those documents bear no conceivable relationship to the subject of the Commission's investigation.

8. Chase is not unmindful of the legitimate concerns of this Commission in connection with matters that fall within its jurisdiction. Without prejudice to our right to raise jurisdictional issues, we have voluntarily made available to the Commission's staff material listed in a prior subpoena which sought production of all minutes of board and committee meetings, at which named directors were present, since January 1, 1960. A copy of that subpoena is annexed hereto as Exhibit D. I personally spent the better part of a week producing those minutes for examination by the Commission's staff and furnishing it, both formally and informally, with answers to a variety of questions as to how our directors function with respect to banking operations.

9. The board of directors of the Bank does not approve loans or commitments or credit lines, whether extended to energy companies or to any other bank customer.

10. Clearly the Bank's commercial relationships during the past decade with at least some of the eighteen energy

* The Certificate of Incorporation of Chase and Articles of Association of the Bank were furnished voluntarily to the Commission's counsel, William A. Horne, on January 27, 1975.

companies listed in the subpoena, and others with which its directors may be affiliated, have been both numerous and far-flung. It seems to us apparent, however, that most if not all of the relevant facts with respect to those dealings can be obtained by this Commission from the companies themselves, which are subject to its jurisdiction, rather than from Chase, which is not. In any event, the burden on the Bank of producing all documents which "show," "identify" or "refer to" such transactions is so substantial as clearly to disrupt our banking operations.

11. Thus far, in excess of 500 pages of documents have been furnished by Chase or the Bank to the Commission's staff in connection with this investigation (which has extended over the past nine months) and another several thousand have been examined. Chase has been, and remains, desirous of cooperating with the Commission to the extent that its lawful investigations require production of records by banks that may reasonably be furnished. We are, however, unable to comply with the unreasonable demands of the present subpoena, consistent with our primary obligations to insure the continuance of normal banking operations.

MICHAEL E. CARLSON
Michael E. Carlson

Sworn to before me this 3rd day
of July, 1975.

PAUL J. URBANIA

PAUL J. URBANIA
NOTARY PUBLIC, State of New York
No. 43-9822586
Qualified in Richmond County
Commission Expires March 30, 1976
Certificate Filed in NY County

Exhibit A

SUBPOENA DUCES TECUM

[Attached As Exhibit 1 to the Complaint]

Exhibit B

Exhibit B (1974 Annual Report of The Chase Manhattan Corporation) Furnished Separately

Exhibit C

THE CHASE MANHATTAN CORPORATION

ORGANIZATION CHART—DOMESTIC SUBSIDIARIES
DECEMBER 31, 1974

The Chase Manhattan Corporation:

- Berkeley Service Corporation 100%
- Chase Investors Management Corporation New York 100%
- Chase Manhattan Bank of Central New York, N.A. 100%
- Chase Manhattan Bank of Eastern New York, N.A. 100%
- Chase Manhattan Bank of Greater Rochester, N.A. 100%
- Chase Manhattan Bank of Long Island, N.A. 100%
- Chase Manhattan Bank of The Mid-Hudson, N.A. 100%
- Chase Manhattan Bank of Northern New York, N.A. 100%
- Chase Manhattan Bank of The Southern Tier, N.A. 100%
- Chase Manhattan Bank of Western New York, N.A. 100%
- Chase Manhattan Consulting, Inc. 100%
- Chase Manhattan Leasing Corporation 100%
- Chase Manhattan Realty Leasing Corporation 100%
- Chase National Corporate Services, Inc. 100%
- Chase Manhattan Realty Capital Corporation 100%
  - Housing Investment Corporation of Florida 100%
  - Dovenmuehle Inc. 100%
    - Dovenmuehle, New York, Inc. 100%
    - Fort Dearborn Mortgage Company (Inactive) 100%
- Statewide Facilities Corporation 100%
- The Chase Manhattan Bank, N.A. 100%
  - Chase Econometric Associates, Inc. 80%
  - Chase International Investment Corporation 100%
  - Chase Manhattan Capital Corporation 100%
    - Broadcast Data Base Inc. 75%
    - California Scientific Laboratories 30.0%

Exhibit C

Color Mate, Inc. 25.0%
Coral Inc. 40.0%
Earl Graves Publishing Company, Inc. 25.0%
Hydrolevel Corporation 30.0%
Integrated Electronics Corp. 40.3%
Integrated Training Systems, Inc. 38.0%
Yorkshire Industries, Inc. 25.0%
Overlakes Corporation 29.3%
Reading Aviation Service, Inc. 71.7%
Transport Data Comm., Inc. 35.0%
National Medical Products Corp. 27%
Precision Instruments Company 31%
Chase Bank International—Los Angeles 100%
Chase Bank International—Miami 100%
Chase Bank International—Chicago 100%
Chase Bank International—Houston 100%
Chase Manhattan Overseas Banking Corporation 100%
Housing Investment Corporation 100%
Chase Manhattan Overseas Finance Corporation 100%
Chase Manhattan Overseas Corporation 100%
Chase Manhattan Service Corporation 100%
Chase World Information Corporation 100%
Interactive Data Corporation 100%
Interactive Data Services, Inc. 100%
Manch, Inc. (Nominee) 100%
Norbax, Inc. (Nominee) 100%
M & M Minerals Corporation (DPC) 100%
Oceanic Shares Corporation 100%
Overseas Realty Corp. 100%
Overseas Shares Corporation 100%
Pan American Shares Corporation 100%
Rittenhouse Capital Corporation (Inactive) 100%
South Atlantic Shares Corporation 100%
Standish Financial Corporation (Inactive) 100%
The Chase Company, Inc. (Inactive) 100%
Uni-Card Company (Name Saver) 100%

Exhibit C

Uni-Card Corporation (Name Saver) 100%
Uni-Card Inc. (Name Saver) 100%
Uni-Serv Company (Name Saver) 100%
Uni-Serv Corporation (Name Saver) 100%
Uni-Serv Limited (Name Saver) 100%

Exhibit D

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

To Michael E. Carlson, Vice-President & Secretary
of Chase Manhattan Bank, N.A. and
Chase Manhattan Corp.—One Chase Manhattan Plaza
New York, N. Y. 10005

You are hereby required to appear before Allee A. Ramadhan, an Attorney and Examiner of the Federal Trade Commission, at 2120 L Street, N.W., Room 402 in the City of Washington, D.C., on the 2nd day of December, 1974, at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741-0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies which are attached and made part hereof, for the purposes stated therein.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents. See Attached "Definitions" and "Specifications"

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has hereunto set his hand and caused the seal of said Federal Trade Commission to be affixed at Washington, D.C., this 5th day of November, 1974.

KENNETH C. ANDERSON
Assistant Director, Bureau of Competition

To WITNESS.—If claim is made for witness fee or mileage, this subpoena should accompany voucher.

Exhibit D

DEFINITIONS

1. *Committee*—any entity created, designated or established by the Board of Directors or provided for in the articles of incorporation or by-laws of Chase Manhattan Bank or of Chase Manhattan Corporation whose membership is chosen in whole or in part from among the Board of Directors.

2. *Minutes*—include memoranda, notes, transcriptions and any other memorializations of the actions or deliberations of meetings of the Board of Directors or of committees and include all wire, tape and other electronic recording of oral communications at meetings of the Board of Directors or of committees.

N.B. Chase Manhattan Bank and Chase Manhattan Corporation are construed to include any organization which by virtue of merger, acquisition or other reorganization is a predecessor of the Bank or Corporation.

SPECIFICATIONS

For the period of January 1, 1960 through November 16, 1974, copies of all minutes of meetings of the Board of Directors of Chase Manhattan Bank and Chase Manhattan Corporation and copies of all minutes of meetings of committees at which any of the following were present:

Robert O. Anderson
Eugene R. Black
John T. Connor
Paul L. Davies
Gilbert W. Fitzhugh
J. K. Jamieson
Ralph Lazarus
John H. Loudon
John J. McCloy
Frank O. Prior
Stuart T. Saunders
John E. Swearingen

Affidavit in Support of Chase Manhattan's Motion to Limit or Quash a Subpoena Duces Tecum

UNITED STATES OF AMERICA
Before the FEDERAL TRADE COMMISSION

In the Matter of

Non-Public Investigation
File No. 741 0019

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

EDWARD J. REILLY, being duly sworn, says:

1. I am a member of the firm of Milbank, Tweed, Hadley & McCloy, attorneys for The Chase Manhattan Corporation (hereinafter "Chase").

2. I make this affidavit in support of Chase's motion, pursuant to Rule 2.7(b) of the Commission's Rules of Practice, to limit or quash a subpoena duces tecum dated June 10, 1975, and issued by an Assistant Director of the Bureau of Competition.

3. For the past nine months our firm has acted as counsel to Chase and its principal subsidiary, The Chase Manhattan Bank (National Association), in connection with various requests for information made by the Commission's staff relating to the present investigation.

4. Annexed hereto as Exhibit A is a copy of a letter sent by the Commission's staff on September 25, 1974.

5. Annexed hereto as Exhibits B and C are copies of subpoenas dated November 5, 1974, and thereafter served upon officers of Chase.

Affidavit in Support of Chase Manhattan's Motion to Limit or Quash a Subpoena Duces Tecum

6. Annexed hereto as Exhibits D and E are copies of correspondence between the Commission's Bureau of Competition and our firm in November 1974 with respect to those subpoenas and a third subpoena (a copy of which is annexed as Exhibit D to the affidavit of Michael E. Carlson) seeking production of certain documents.

7. As of this date, the Commission's staff has expressed no interest in scheduling a date for testimony by either of those officers. Instead, our firm has subsequently received a number of informal requests for additional documents and information with respect to our clients' banking activities. Annexed hereto as Exhibits F, G and H are copies of our responses to those requests.

8. Reserving our right to raise appropriate jurisdictional objections, we have repeatedly endeavored to obtain some indication from the Commission's staff as to the relevance of most requested documents to an investigation of the energy industry and why it is necessary to pursue such an investigation through a bank. Annexed hereto as Exhibits I and J are copies of our most recent correspondence in this regard. We have received no response to our letter of February 27, 1975.

EDWARD J. REILLY
Edward J. Reilly

Sworn to before me this
3rd day of July, 1975.

KENNETH A. PERKO, JR.

KENNETH A. PERKO, JR.
Notary Public, State of New York
(Illegible)
Commission Expires March 30, 1976

Exhibit A

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF COMPETITION

Mr. David Rockefeller, Chairman,
Chase Manhattan Bank, N.A.,
One Chase Manhattan Plaza,
New York, New York 10005

Re: Unnamed Energy Companies
File No. 741 0019

DEAR MR. ROCKEFELLER:

Pursuant to Sections 6, 9 and 10 of the Federal Trade Commission Act and Commission resolutions dated April 16, 1974 and September 12, 1974, copies of which are attached hereto, the Bureau of Competition is presently engaged in an extensive study of competitive conditions in the energy industry. As part of that study, staff is focusing its attention on relationships between energy companies and banks to determine what, if any, anticompetitive effects may flow from these relationships. Our records indicate that Chase Manhattan Bank, N.A. has been interlocked through common directors with energy companies. Therefore, the Bureau has selected Chase Manhattan Bank, N.A. for a more complete investigation.

We are particularly interested, among other things, in the following areas of bank activity as they relate to energy companies:

1. Other directorships held by Chase Manhattan Bank, N.A. directors for the period January 1, 1960 through the present.

2. Director involvement in Bank Operations.

3. Bank Dealings with Energy Companies.

4. Bank Expertise in the Energy Industries.

5. Loan Policies.
6. Trust Holdings.
7. Equipment Leasing.
8. Bidding on Oil or Gas Leases.

We intend to conduct investigational hearings regarding these matters during the early part of October. Accordingly, we will contact you to establish dates which would be convenient in proceeding in this matter.

Sincerely yours,

WILLIAM HORNE
William Horne,
Attorney,
Bureau of Competition.

Enclosures

CERTIFIED MAIL

cc: MR. LOUIS A. RUSSO,
General Counsel,
Chase Manhattan Bank, N.A.,
One Chase Manhattan Plaza,
New York, New York 10005

Exhibit B

SUBPOENA AD TESTIFICANDUM

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

To Michael E. Carlson, Vice-President & Secretary of Chase Manhattan Bank, N.A. and Chase Manhattan Corp.—One Chase Manhattan Plaza,
New York, New York 10005

You are hereby required to appear before Allee A. Ramadhan an Attorney and Examiner of the Federal Trade Commission, at 2120 L Street, N.W. Room 402 in the City of Washington, D.C. on the 2nd day of December, 1974, at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741-0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies which are attached and made part hereof, for the purposes stated therein.

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has caused the seal of said Federal Trade Commission to be affixed, and has hereunto set his hand at Washington, D. C., this 5th day of November, 1974.

KENNETH C. ANDERSON
Assistant Director, Bureau of Competition

Exhibit C

SUBPOENA AD TESTIFICANDUM

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

To Raymond V. O'Brien, Jr., Senior Vice-President of Chase Manhattan Bank, N.A. and Chase Manhattan Corporation, One Chase Manhattan Plaza, New York N. Y. 10005

You are hereby required to appear before Allee A. Ramadhan an Attorney and Examiner of the Federal Trade Commission, at Room 402—2120 L Street, N.W. in the City of Washington, D. C. on the 9th day of December, 1974, at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741-0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies which are attached and made part hereof, for the purposes stated therein.

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has caused the seal of said Federal Trade Commission to be affixed, and has hereunto set his hand at Washington, D. C., this 5th day of November, 1974.

K. C. ANDERSON
Assistant Director, Bureau of Competition

Exhibit D

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF COMPETITION

Roy C. Haberkern, Jr. Esq.
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, N. Y. 10005

Re: Unnamed Energy Companies
File No. 741 0019

DEAR MR. HABERKERN:

This has reference to telephone conversations between you and Commission staff on November 18 and 20, 1974, regarding the November 5, 1974 subpoena duces tecum directed to Michael E. Carlson and the subpoenas ad testificandum directed to Carlson and Raymond V. O'Brien, Jr., employees of Chase Manhattan Bank.

You indicated that Commission attorneys will be permitted access to those files of Chase Manhattan Bank called for in the subpoena duces tecum at a mutually convenient time. If you are willing to agree to an arrangement whereby the Commission is permitted to obtain copies of all documents selected by the Commission attorneys who conduct the file search, then we are willing to deem the receipt of said copies as compliance with the subpoena duces tecum directed to Mr. Carlson.

In addition, Messrs. Carlson and O'Brien need not appear to testify on the dates set forth in the subpoenas ad testificandum of November 5, 1974, which they received. The date of their appearances is hereby postponed until my staff has had an opportunity to examine and collect documentary materials from Chase Manhattan files pursuant to the aforementioned subpoena duces tecum. The Carlson and

Exhibit D

O'Brien testimony will, therefore, have to be rescheduled for some later date.

Please advise whether the above described arrangements are agreeable to you.

Sincerely yours,

KENNETH C. ANDERSON
Kenneth C. Anderson
Assistant Director
Bureau of Competition

Exhibit E

November 25, 1974

Re: Unnamed Energy Companies
File No. 741 0019

Mr. Kenneth C. Anderson
Assistant Director
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

DEAR MR. ANDERSON:

I wish to acknowledge receipt of your letter of November 20, 1974, regarding the November 5, 1974 subpoena duces tecum directed to Michael E. Carlson and the subpoenas ad testificandum directed to Carlson and Raymond V. O'Brien, Jr., employees of Chase Manhattan Bank.

As discussed with members of your staff, we are agreeable that the Commission attorneys examine files of Chase Manhattan Bank called for in the subpoena duces tecum at a mutually convenient time and obtain copies of such documents selected by the Commission attorneys as are germane, the Bank and the Corporation retaining the right to make such challenges as may be appropriate.

Very truly yours,

RCHjr:jt
CC: Messrs. Roeder
Russo
Carlson

Exhibit F

LETTERHEAD OF

MILBANK, TWEED, HADLEY & McCLOY

January 20, 1975

William Horne, Esq.
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

DEAR MR. HORNE:

I am writing in response to your letter of December 23, 1974 which refers to the letter of the Federal Trade Commission dated September 25, 1974 and the subpoena of November 5, 1974 and describes the type of information being sought from The Chase Manhattan Bank, N.A. Your letter of December 23, 1974 expands the scope of the inquiry to include banking operations which appear to be clearly outside the regulatory or investigative authority of the Commission. Moreover, the additional request for information described in your letter is so oppressive in its scope as to render compliance therewith unreasonably burdensome and, indeed, disruptive of the operations of the Bank.

We remain desirous of cooperating with you in the investigation of matters falling within the jurisdiction of

the Commission. Of course, information concerning the affairs of bank customers and shareholders can only be furnished pursuant to a lawful order of a court of competent jurisdiction or a subpoena properly issued by an authorized agency. In an effort to assist you in the investigation, set forth below is information furnished to me by the Bank with respect to Part III of your letter of December 23, 1974. In giving this information neither the Bank nor The Chase Manhattan Corporation waives any rights, privileges or defenses to which either of them is entitled.

1. Lending authority is vested in the Chairman, the President, either Vice Chairman and the Chairman of the General Loan Committee and, in addition, certain personnel of the Bank are given such authority under supervision to insure conformity with general lending policies. Under the procedures established, the primary responsibility for fixing lines of credit and making loan commitments rests with officers who directly handle customer relationships under the supervisory responsibility of officers in charge of departments and senior officials whose approval is required in certain instances. Substantial loans and commitments made under such delegated authority are reported to the respective departmental or divisional committees which have the responsibility for reviewing them and if such loans or commitments are in excess of a certain amount they are reviewed by a bank wide General Loan Committee and are reported, after the fact, to the Board of Directors. The principal purpose of the committees which review commitments is to insure that lending arrangements conform to credit standards and policies in effect. As indicated, the Board of Directors does not approve loans or commitments or credit lines, and lending authority is delegated to various subordinate officials by the Chairman and the President subject (with certain exceptions) to limitations as to amounts.

2. The Bank does not allocate funds to divisions of the Bank on a periodic basis. No such allocation procedure

is employed as a management system for controlling particular segments of the Bank's overall loan portfolio. The Bank employs an annual budgetary process to determine the direction of its business each year. Each department prepares a recommended budget setting forth its objectives and plans for the year which is submitted to the Management Committee of the Bank for review and approval. The finalized budget as approved by the Management Committee is then submitted to the Board of Directors for its approval.

3. The Management Committee of the Bank provides the direction for corporate strategies for Asset-Liability Management. The Asset-Liability Management Committee concerns itself with the changing asset-liability mix that is necessary for achieving both immediate and long-term bank objectives, including the quality of, and return on, the Bank's investment and loan portfolios as well as the alternatives for funding those portfolios. The Credit Policy Committee has responsibility for the coordination of loan pricing, credit and marketing policies. In coordination with the Asset-Liability Management Committee, the Credit Policy Committee relates lending policies to overall bank portfolio management. The Credit Policy Committee is also a communication vehicle to insure consistent understanding of lending policies throughout the lending departments. The ultimate responsibility for implementing those policies is vested in the banking departments and the responsibility and authority to make day-to-day business decisions within the policy guidelines are vested in the respective line executives in charge of those departments.

The Bank does not have a money allocation committee. However, the Credit Policy Committee from time to time has adopted measures to control the overall growth of loans. In July 1974, a vigorous loan restraint program was established in connection with the national fight against inflation. Under the policies established, non-productive loans were discouraged, and in order to insure compliance, all

applications for new or increased credit facilities over $3 million were made subject to approval by the Committee. The policy established by the Credit Policy Committee was subsequently reinforced by the statement of the Federal Advisory Council on bank lending policies which was distributed by the Federal Reserve Bank of New York under date of September 17, 1974 in Circular No. 7459, a copy of which is enclosed.

4. The Bank has not adopted any standard covenants and restrictions for loan agreements for high risk, medium risk and low risk borrowers. A term loan agreement, typically, addresses the particular financial structure and nature of the borrower's business and the covenants are designed to assure, so far as practicable, maintenance of a sound financial condition and to call for such information as will permit detection of any deterioration on a timely basis.

5. Enclosed herewith are statements of procedures and practices with respect to investments for discretionary trust accounts and voting of shares held in trust, including information as to the identity of those with whom the final decisions rest.

6. The procedures, review and approval required to permit an officer of Chase Manhattan Bank to serve as the director of another corporation are set forth in Management Policies II-C-1, a copy of which is enclosed.

7. The largest individual stockholder of record of The Chase Manhattan Corporation is the Chairman of the Board. The other largest stockholders of record are nominees, street names and institutional investors and the beneficial owners are not known to The Chase Manhattan Corporation.

You have indicated certain bank personnel with whom you would wish to speak. I would suggest that initially your conversations might be with Mr. John Hooper, Execu-

tive Vice President and Chairman of the General Loan Committee.

Information concerning directors' affiliations is being compiled and will be furnished to you when completed.

Very truly yours,

ROY C. HABERKERN, JR.

RCHjr:em
Enclosures

Exhibit G

January 27, 1975

WILLIAM HORNE, ESQ.
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

DEAR MR. HORNE:

This is to confirm that I handed to you this morning in the office of Mr. Michael Carlson, Secretary of The Chase Manhattan Corporation and of The Chase Manhattan Bank, N.A., the information concerning directors' affiliations which you had requested as set forth in the footnote on page 1 of your letter to me of December 23, 1974. Mr. Carlson has informed me that the affiliation information furnished to you was that which was reported to the Secretary's office during the term of service of the respective directors and, with the exception of Mr. Prior, date back only to 1964 as to directorships other than Chase. In most cases, the records do not show dates for new and resigned directorships that were reported during the respective terms of service as a Chase director. For former directors, the principal occupation shown is that at the time the director resigned from the Chase Board. Following such resignation no effort was made to update the affiliations.

The period of service as a Chase Manhattan Bank director is shown without any reference to the Chase National Bank and Bank of Manhattan merger in 1955, at which time of the directors in question only Mr. McCloy was a director, or the conversion to a national bank on September 23, 1965 at which time several of the individuals were already directors. With respect to question 7 of Part 1 of your letter of December 23, 1974, Mr. Carlson informs me that he has been unable to locate in his files anything responsive to the question. His own files on prospective directors date back only to November 1969 and contain only

copies of materials submitted at a board or executive committee meeting. The material was essentially short biographies of the type that can be developed from standard references such as WHO'S WHO. Only Mr. Loudon was elected after November 1969 and he was well known to most of the directors and there was no need to furnish a biography in his case.

Very truly yours,

RCHjr:jt

Exhibit H

February 3, 1975

WILLIAM HORNE, ESQ.
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

DEAR MR. HORNE:

Pursuant to my letter of November 25, 1974 to Mr. Kenneth C. Anderson, Assistant Director, Bureau of Competition, Federal Trade Commission, and following your examination of certain files of The Chase Manhattan Corporation and of The Chase Manhattan Bank, N.A. relative to proceedings of the board of directors and of committees of the board, I am enclosing herewith in accordance with your request the following:

1. A copy of extracts from the initial registration (Y-5) filed in 1971 and the annual reports (Y-6) for 1971, 1972 and 1973 filed with the Federal Reserve Board showing director affiliations and ownership of shares of the Corporation;

2. A copy of the records maintained in the Office of the Secretary concerning director affiliations;

3. A copy of extracts from the annual reports from 1960 through 1973 listing the directors; and

4. A copy of extracts from certain minutes of the board of directors and of the executive committee of The Chase Manhattan Corporation which were marked by you. These extracts include resolutions establishing the executive committee of the board, the compensation committee of the board, the audit committee of the board and amending the by-laws with reference to the executive committee of the board, and establishing the investment committee of the board; a minute rela-

tive to the presentation of the report of the audit committee, and minutes relative to the formation of an equipment leasing subsidiary and a real estate leasing subsidiary. It is very difficult for me to understand the relevance of these extracts to your investigation except that they have a bearing on the organization of the board of directors and of committees of the board.

You have also marked the following extracts:

1. An extract relative to the proposal that the Corporation enter into arrangements for the acquisition of United States Leasing International, Inc. which arrangements were never consummated;

2. An extract relative to the formation of a merchant bank in London;

3. An extract of a minute authorizing the Corporation to issue commercial paper;

4. An extract relative to the formation of a subsidiary to carry on loan production activities and administrative services on behalf of the Corporation and its bank subsidiaries;

5. An extract of the minute authorizing members of the Executive Office to approve certain capital expenditures within the Capital Budget;

6. An extract relative to the formation of a subsidiary to engage in commercial factoring and finance; and

7. A further extract relative to the sales of commercial paper by the Corporation.

In my view, none of these items is germane. If you still wish to have this material and will let me know how in your opinion it is "necessary" to the investigation, I will be glad to reconsider.

Exhibit H

With respect to the pages that you marked in the minute books of the board of directors and the executive committee of The Chase Manhattan Bank, N.A., I am enclosing herewith a copy of extracts therefrom relative to committees of the board and the authorization given by the board to form an operations subsidiary to engage in certain types of leasing activities. The remainder of the material on the marked pages and the pages which are not included relate solely to internal corporate matters of the Bank, including legal papers relative to the formation of the bank holding company, which I do not believe could be considered necessary to the investigation. Again, however, if you still wish to have such material and will let me know how in your opinion it is necessary to the investigation, I will be glad to reconsider.

The materials submitted herewith are furnished without prejudice to the rights of the Corporation or of the Bank including any rights that the Corporation or the Bank may have to make appropriate challenges.

Very truly yours,

RCHjr:jt
Enclosures
Copy Carlson w/enc.

Exhibit I

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

February 24, 1975

BUREAU OF COMPETITION

ROY C. HABERKERN, JR.
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, New York 10005

Re: Unnamed Energy Companies
File No. 741 0019

DEAR MR. HABERKERN:

The materials you submitted showing directors' affiliations and excerpting sections from the minutes of the Board and executive committee meetings generally satisfy our need for information in these areas.

We continue to require and believe we are legally entitled to certain excerpts from the minutes that you refused to supply. This letter, however, is a wholly inappropriate forum to argue the merits of our position and we will continue to seek this and other relevant information in a manner consistent with our mandate from Congress.

Thank you for your assistance.

Sincerely yours,

WILLIAM HORNE
William Horne
Attorney
Bureau of Competition
2120 L Street, N.W.
Room 452-3
Washington, D.C. 20037

Exhibit J

February 27, 1975

WILLIAM HORNE, ESQ.
Bureau of Competition
Federal Trade Commission
2120 L Street, N.W.
Room 452-3
Washington, D.C. 20037

DEAR MR. HORNE:

I wish to acknowledge receipt of your letter to me of February 24, 1975. In my letter of February 3, 1975, I indicated that I had not furnished you at that time with copies of certain documents which you had examined during the period of January 27 to January 30. I stated that I would, however, be glad to reconsider our position if you would let me know how in your opinion those documents are necessary to the investigation. Whenever I hear from you in this regard, I will then be in a position to reconsider and either supply copies or make a formal motion to modify the subpoena duces tecum of November 5, 1974.

Sincerely yours,

RCHjr:jt
cc:Mr. Reilly

Affidavit of Thomas D. Hill, Jr.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of Non-Public Investigation File No. 741 0019	AFFIDAVIT in support of Chase Manhattan's motion to limit or quash a Subpoena Duces Tecum

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

THOMAS D. HILL, JR., being duly sworn, says:

1. I am a Senior Vice President of The Chase Manhattan Bank (National Association) and am in charge of its domestic credit policy planning operations.

2. I make this affidavit in support of Chase's motion, pursuant to Rule 2.7(b) of the Commission's Rules of Practice, to limit or quash a subpoena duces tecum dated June 10, 1975, and issued by an Assistant Director of the Bureau of Competition.

3. I have read the subpoena to determine the extent to which compliance with it would require the search and production of records maintained in connection with Chase's credit policy planning and supervision.

4. Paragraph 12 of the subpoena demands production of "all communications" between bank officers pertaining to "credit policies . . . applicable to energy companies" during the past decade and "relating or referring to," among other things, any "estimates of loan demand," "recruitment of new customers," or "distributions among firms by size, credit worthiness . . . [or] other business characteristics."

5. Chase's credit records are not maintained in such a manner as to enable it to comply with this demand without reviewing hundreds of thousands of such communications.

6. Similarly, the demand in paragraph 14 for production of "documents sufficient to identify" total credit commitments, average and maximum credit used, and average and maximum deposits and balances (for each of eighteen listed companies) could not be complied with except by reviewing approximately 900 pages of domestic ledger sheets, 300 pages of reports on international transactions and 40,000 pages of monthly statements.

7. Such a review would necessarily require the dedication of a sufficient number of credit planning and supervisory personnel as to disrupt our normal banking operations.

THOMAS D. HILL, JR.
Thomas D. Hill, Jr.

Sworn to before me this
2 day of July, 1975.

JOHN R. NELSON

JOHN R. NELSON
NOTARY PUBLIC, State of New York
No. 30-8116890
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires March 30, 1976

Affidavit of William W. Higgins

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of Non-Public Investigation File No. 741 0019	AFFIDAVIT in Support of Chase Manhattan's Motion to Limit or Quash a Subpoena Duces Tecum

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

WILLIAM W. HIGGINS, being duly sworn, says:

1. I am a Vice President of The Chase Manhattan Bank (National Association) and am in charge of its Petroleum Division.

2. I make this affidavit in support of Chase's motion, pursuant to Rule 2.7(b) of the Commission's Rules of Practice, to limit or quash a subpoena duces tecum dated June 10, 1975, and issued by an Assistant Director of the Bureau of Competition.

3. I have read the subpoena to determine the extent to which compliance with it would require the search and production of records maintained under my supervision.

4. Paragraphs 13, 14 and 15 of the subpoena call for production of general categories of documents with respect to "any energy department" of the bank and virtually all transactions with eighteen listed "energy companies."

5. There are, in the Petroleum Division alone, approximately 219 linear feet of current files which would have to be examined in order to comply with the demands of this

subpoena. In addition, I am advised that there are forty linear feet of Petroleum Division files held in storage at Granite Springs, New York, which would also have to be reviewed to comply with the subpoena.

6. These figures represent merely the files of our division maintained in New York, excluding such companies as Exxon Corp., Anaconda Company, American Smelting & Refining Co., and Southern Natural Resources, Inc. (whose accounts are not handled by the petroleum division) and the substantial files on business transacted with petroleum companies maintained by Chase's International Department and overseas affiliates at various locations ranging from London to Singapore.

7. Compliance with this portion of the subpoena, insofar as it pertains to the production of records maintained by the Petroleum Division, would require a review of each and every such file to determine whether or not it contains documents which "show," "identify," or relate to the various categories of information sought. Such a review would necessarily encompass thousands of individual documents maintained by the Petroleum Division (which is currently staffed by 16 bank officers) and substantially interfere with our normal banking operations.

WILLIAM W. HIGGINS
William W. Higgins

Sworn to before me this 1st day
of July, 1975.

HAROLD HECHT
HAROLD HECHT
Notary Public, State of New York
No. 60-5826895
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

Affidavit of Stanley J. Lewand

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of Non-Public Investigation File No. 741 0019	AFFIDAVIT in Support of Chase Manhattan's Motion to Limit or Quash a Subpoena Duces Tecum

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

STANLEY J. LEWAND, being duly sworn, says:

1. I am a Vice President of The Chase Manhattan Bank (National Association) and am in charge of its Public Utilities Division.

2. I make this affidavit in support of Chase's motion, pursuant to Rule 2.7(b) of the Commission's Rules of Practice, to limit or quash a subpoena duces tecum dated June 10, 1975, and issued by an Assistant Director of the Bureau of Competition.

3. I have read the subpoena to determine the extent to which compliance with it would require the search and production of records maintained under my supervision.

4. Paragraphs 13, 14 and 15 of the subpoena call for production of general categories of documents with respect to "any energy department" of the bank and virtually all transactions with eighteen listed "energy companies."

5. There are, in the Public Utilities Division alone, approximately 300 linear feet of current files which would

have to be examined in order to comply with the demands of this subpoena. In addition, I am advised that there are eight boxes of Public Utilities Division files held in storage at Granite Springs, New York, which would also have to be reviewed to comply with the subpoena.

6. These figures represent merely the files of our division maintained in New York, excluding files maintained in London and substantial files outside our division pertaining to Chase's service as a bond trustee.

7. Compliance with this portion of the subpoena, insofar as it pertains to the production of records maintained by the Public Utilities Division, would require a review of each and every such file to determine whether or not it contains documents which "show," "identify," or relate to the various categories of information sought. Such a review would necessarily encompass hundreds of thousands of individual documents maintained by the Public Utilities Division (which is currently staffed by 13 bank officers) and would require the dedication of a sufficient number of personnel as to make it impossible for us to continue our normal banking operations.

STANLEY J. LEWAND
Stanley J. Lewand

Sworn to before me this
30th day of June, 1975.

NINA A. BODELL

NINA A. BODELL
NOTARY PUBLIC, State of New York
No. 31-0334675
Qualified in New York County
Commission Expires March 30, 1977

Affidavit of Donald O. Cameron

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of Non-Public Investigation File No. 741 0019	AFFIDAVIT in Support of Chase Manhattan's Motion to Limit or Quash a Subpoena Duces Tecum

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

DONALD O. CAMERON, being duly sworn, says:

1. I am a Senior Vice President of The Chase Manhattan Bank (National Association) and am in charge of its international funding and foreign exchange group.

2. I make this affidavit in support of Chase's motion, pursuant to Rule 2.7(b) of the Commission's Rules of Practice, to limit or quash a subpoena duces tecum dated June 10, 1975, and issued by an Assistant Director of the Bureau of Competition.

3. I have read the subpoena to determine the extent to which compliance would require the search and production of records maintained under my supervision.

4. Paragraph 14(e) of the subpoena calls for the production of "documents sufficient to identify for each year" since January 1965, all "commercial . . . services performed" for eighteen listed companies, "the dollar value charged for each such service," and "the dollar value to [the] bank attributed to each such service." Among those companies are Exxon Corp. and Mobil Oil Corp., each of which does substantial foreign exchange business

with the bank both at our New York offices and, through overseas subsidiaries, at locations around the world.

5. We engage in approximately 500 spot foreign exchange transactions per day, each of which is reflected in a separate contract and from two to four supporting documents. Compliance with this portion of the subpoena would require a review of each and every such transaction processed by our group by manual examination of each such contract.

6. In accordance with the bank's present record retention policies, such contracts are maintained in storage only for the period of the past six years. Based upon a 250 working day year, there are approximately 750,000 separate contracts which would have to be examined to identify those which pertain to the listed companies. Assuming that a single individual could examine 6,000 of them per day, a minimum of 125 man-days of work would be involved in locating the foreign exchange documents called for by paragraph 14(e).

7. Such a review, if to be undertaken within the time period allowed by the subpoena, would require the dedication of a sufficient number of personnel as to make it impossible for our group to continue its normal banking operations.

DONALD O. CAMERON
Donald O. Cameron

Sworn to before me this
27 day of June, 1975.

MICHAEL E. MARINAK

MICHAEL E. MARINAK
NOTARY PUBLIC, State of New York
No. 30-4506151
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires March 30, 1977

Affidavit of Michael P. Esposito, Jr.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of Non-Public Investigation File No. 741 0019	AFFIDAVIT in support of Chase Manhattan's Motion to Limit or Quash a Subpoena Duces Tecum

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

MICHAEL P. ESPOSITO, JR., being duly sworn, says:

1. I am the Controller and a Vice President of The Chase Manhattan Corporation ("Chase") and am in charge of its Financial Controls Group.

2. I make this affidavit in support of Chase's motion, pursuant to Rule 2.7(b) of the Commission's Rules of Practice, to limit or quash a subpoena duces tecum dated June 10, 1975, and issued by an Assistant Director of the Bureau of Competition.

3. I have read the subpoena to determine the extent to which compliance with it would require the search and production of financial records maintained by Chase in connection with its dealings during the past decade with the eighteen energy companies listed in an appendix to the subpoena.

4. The subpoena appears to be global in scope and calls, in paragraph 14(e), for production of "documents sufficient to identify" each and every "commercial, trust and operating service performed for the listed companies, the dollar value charged for each such service and the

dollar value to your bank attributed to each such service provided by your bank."

5. Such information is not maintained by Chase in any readily accessible format. In order to begin to comply with this demand (solely with respect to domestic operations) it would be necessary to review hundreds of thousands of pages of summary performance reports, transaction journals, and spread sheets in order to identify millions of individual service transactions during the ten-year period covered by the subpoena. Additionally, many of the individual transaction "tickets" will be insufficient to identify readily a particular customer or even a particular department within Chase.

6. Such a review would necessarily require the dedication of a sufficient number of supervisory and clerical accounting personnel as to disrupt our normal banking operations.

MICHAEL P. ESPOSITO, JR.
Michael P. Esposito, Jr.

Sworn to before me this
7th day of July, 1975.

PETER A. COPELAND

PETER A. COPELAND
NOTARY PUBLIC, State of New York
No. 31-4605446
Qualified in New York County
Commission Expires March 30, 1976

Exhibit 3

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

August 21, 1975

Edward J. Reilly, Esq.
Messrs. Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, New York 10005

Re: Subpoena Duces Tecum Issued to
Chase Manhattan Corp. on June 10, 1975
File No. 741 0019
Unnamed Energy Companies

DEAR MR. REILLY:

This is in response to the motion of Chase Manhattan Corp. to limit or quash the above-described subpoena. The motion is hereby granted in part and denied in part.

The Commission has decided to limit the subpoena in the following respects:

1. Under the section designated "*Definitions,*" Part (a) is modified to read:

> (a) "Your bank" means Chase Manhattan Corp., Chase Manhattan Bank, N.A., venture capital and equipment leasing subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

2. Part (h) is modified by adding after the last sentence of the definition of "Documents" the following sentence:

> Documents refers only to those located in the United States.

Exhibit 3

3. Under the section designated "DOCUMENTS TO BE PRODUCED," Part (4) is modified to read:

> 4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors, if applicable to the selection of persons who were directors or officers of energy companies.

4. Part (5) is modified to read:

> 5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period, if used in the consideration of a person who was a director or officer of an energy company.

5. Part (7) is modified to read:

> 7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors who were simultaneously directors or officers of energy companies which:
>
> (a) describe the duties and obligations of members of the Board of Directors, and
>
> (b) describe the structure, policies or operations of your bank.

6. Part (8) is modified to read:

> 8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period if applicable to service on the board of an energy company:
>
> (a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

7. Part (10) is modified to read:

10. Copies of all documents, in the nature of summaries, reviews and digests, which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

8. Part (15)(c) is modified to read:

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated credit transactions during the subpoena period with any of the companies listed in the Appendix involving amounts in excess of $1,000,000.

In all other respects, the Commission has denied the motion, having made the following determinations with respect to the issues you have raised:

1. The Trans-Alaska Pipeline Authorization Act, Pub. L. 93-153, 87 Stat. 576 (1973) amended Section 6 of the Federal Trade Commission Act (15 U.S.C. § 46) to provide that the Commission may investigate banks "to the extent that such action is necessary to the investigation of any . . . industry which is not engaged . . . in banking." The

amendment grants the Commission investigatory jurisdiction over banks with regard to all subjects "necessary" to the resolution of issues in an investigation of an industry not engaged in banking. The effect of the amendment is to define the permissible scope of an investigation touching on banks and to require that the subject matter of such an inquiry arise out of a matter properly under investigation—in this instance, competitive conditions in the energy industry.

As part of the Commission's Energy Study, its staff is examining the effects of interlocking directorates between energy companies and banks on competitive conditions in the energy industry. Since the availability of credit is highly important to the capital-intensive energy sector, the Commission's staff is investigating the possibility that interlocked energy companies or some segment of the industry with which they are identified receive preference in obtaining credit; the possibility that interlocked energy companies use their position to deny or limit credit available to their competitors or to a segment of the industry to which they are antagonistic; the possibility that interlocked energy companies have access to confidential credit file data of competitors; and the possibility that interlocked energy companies influence bank credit policies to encourage or inhibit various alternative energy sources and industry structures.

Necessary to the resolution of the investigatory issues just described is information concerning your client's allocation of credit among energy companies represented on its board and those not represented, credit policies which dictate such allocation, reasons for choosing directors affiliated with energy companies, and reliance on those directors' advice and participation. Therefore, the Commission may properly compel production of the subpoenaed information in order to complete its inquiry into competitive conditions in the energy industry.

2. The nature and purpose of the investigation of an industry subject to the Commission's jurisdiction determines the permissible scope of the related investigation of a bank. Once this scope is established and the pertinent subject matter delineated, the Commission may demand the production of any documents reasonably relevant to that subject matter. *Adams* v. *FTC*, 296 F.2d 861, 866 (8th Cir. 1961), *cert. denied* 369 U.S. 864 (1962); *FTC* v. *Green*, 252 F. Supp. 153, 156 (S.D.N.Y. 1966); see also, *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950). Therefore, the standard of relevance which applies to subpoenas issued to banks does not differ from the standard applicable to non-banking corporations subject to the Commission's jurisdiction.

In this context, the Commission's investigative authority, as described by the Supreme Court in *United States* v. *Morton Salt Co., supra,* is extensive:

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has the power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend upon a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." 338 U.S. at 642-43.

The Court continued:

> "Even if one were to regard the request for information in this case as caused by nothing more than

official curiosity, nevertheless law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." 338 U.S. at 652.

3. The phrase "to the extent . . . necessary" in the 1973 amendment to Section 6 of the Federal Trade Commission Act has the effect of delimiting the permissible scope of an investigation touching on banks. It does not require that information subpoenaed from a bank be demonstrably unavailable from any other source, nor that the Commission have exhausted every other possible avenue of inquiry before compelling a bank to produce documents.

In any event, relatively few documents to which the subpoena specifications apply are available from energy companies. Information similar to that required by specifications 14(a)-(d), and, in part, 14(e) may be in the possession of energy companies, but such information, in itself, would not reveal the form and context in which your client maintains it. Knowledge of how the information is kept may provide investigative leads and assist the Commission's staff in drawing inferences about several investigative issues.

4. The documents sought by the subpoena, as limited above, are both relevant and necessary to the exploration of matters within the permissible scope of the Commission's investigation into competitive conditions in the energy industry.

All of the subpoenaed documents are relevant in one or more of the following respects:

First, relevant and necessary to the investigation are documents concerning the formation and purposes of the interlocking arrangements and the participation and influence of interlocked directors. Specifications 4, 5, 6, 7, 8,

9 and 11 are among those demanding this type of information.

Second, relevant and necessary to the investigation are documents concerning a bank's credit policies applicable to energy companies. These may reveal distinctions made between interlocked and non-interlocked companies. Specifications 3(c), 11, 12, and 13(e), (f) and (i) are among those demanding this type of information.

Third, relevant and necessary to the investigation are documents concerning a bank's dealings with energy companies. These may be used to identify and compare factors which determine which companies receive credit, on what terms and in which amounts. Specifications 3(c), 10, 14 and 15 are among those demanding this type of information.

In addition to these three substantive areas, certain information concerning a bank's organization and operating procedures is relevant and necessary to the investigation. Knowledge of these procedures is necessary to determining how directors' influence may be brought to bear within the bank. Specifications 1, 2, 3 and 13(a)-(d), (g)-(i) are among those demanding this type of information.

5. The Commission has examined the specifications of the subpoena and finds that, as limited above, the subpoena is neither overly broad nor unduly burdensome. Many of the specifications are expressly limited to documents relevant to interlocked directors or interlocked energy companies. These are circumscribed classes. Other items seek information regarding specific policies which apply to energy companies or with respect to a limited list of energy companies.

While the subpoena demands the production of a substantial number of documents, this results from the extent and size of the bank's operations rather than from any un-

due demands of the subpoena. Inconvenience is relative and must be considered in relation to the size of the subpoenaed party. *Application of Radio Corp. of America,* 13 F. R. D. 167, 172 (S.D.N.Y. 1952). Moreover, breadth alone is not sufficient justification for refusing enforcement of a subpoena. *Adams* v. *FTC, supra* at 867. The test to be applied to claims of burdensomeness is not whether a burden has been imposed, but rather whether the subpoena is so unduly burdensome that compliance with it would clog the conduct of business. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186 (1945); *Genuine Parts Co.* v. *FTC,* 313 F. Supp. 855, 859 (N.D. Ga. 1969), *aff'd.* 445 F.2d 1382 (5th Cir. 1971). The subpoenaed party bears the burden of proving undue burdensomeness. *FTC* v. *Standard American, Inc.,* 306 F.2d 231, 235 (3rd. Cir. 1962). Nothing in the motion to quash persuades the Commission that production of the subpoenaed material would unduly disrupt your client's business. Furthermore, the Commission's own examination of the subpoena, as limited, discloses no undue burden.

6. In order to minimize the burden of production pursuant to the subpoena, the officer of the Commission who issued it is authorized to establish arrangements for Commission personnel to review and, as necessary, reproduce the subpoenaed documents on your client's premises. See § 2.7(a) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.7(a).

Although you have not raised the attorney-client privilege as an objection to the subpoena, the Commission recognizes the possibility that the specifications may encompass certain privileged communications between attorney and client. Therefore, the Commission has determined that such communications need not be produced. However, in lieu of producing documents claimed to constitute privileged attorney-client communications, your

client must submit a schedule identifying each document withheld under claim of such privilege and setting forth, for each such document, the reasons for the application of the privilege.

The Commission further recognizes that many of the subpoenaed documents may be regarded as sensitive business information. Therefore, the Commission has decided to grant your client the following assurances with respect to the contents of all documents responsive to subpoena specifications 3 through 15, inclusive:

1. Pursuant to the Commission's tentative determination of confidentiality, the Secretary of the Commission will deny any request made under the Freedom of Information Act for access to any of the protected documents or to any copies, tabulations, digests, or summaries thereof prepared by the Commission, its staff or consultants.

2. In the event an appeal is taken from the Secretary's denial of such an access request, your client will be promptly notified of the pendency of such appeal and afforded seven days within which to file a written response with the Commission.

3. Thereafter, if the Commission determines that any or all of the documents to which access is sought are not exempt from mandatory disclosure pursuant to the Freedom of Information Act, or that they are exempt but the Commission will exercise its discretion to release them, the Commission will immediately advise your client of its decision and further advise it that the documents will be delivered to the requesting party within five days.

4. The Commission will not release upon its own motion any of the protected documents or their contents to any person outside the employ of the Com-

mission, without first giving your client ten days' notice of its intention to do so.

The foregoing assurances will not apply to the Commission's furnishing information in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process. In the event of such release, the Congressional committee or subcommittee or the court will be advised that your client considers the material to be confidential, and your client will, if possible, be afforded prior notice.

The Commission further exempts from the foregoing assurances its furnishing the documents to an outside consultant retained by the Commission. However, only a consultant who has agreed not to release the documents may be given access to them.

The foregoing assurances shall be effective for a period of three years from the date of this letter, at the end of which time the commitment may be extended upon a showing of justification.

The foregoing assurances do not apply to any information which (1) is now in the public domain; (2) enters the public domain from a source other than the Commission or its employees; (3) was in the Commission's possession prior to disclosure to the Commission pursuant to this subpoena; or (4) is supplied to the Commission or its employees by a third party lawfully in possession thereof. Nothing in the foregoing sentence, however, will constitute a waiver by your client of any restrictions imposed by law on the Commission's use of any such information, however obtained.

The foregoing assurances are given with the understanding that in the event of issuance of an adjudicative complaint in this matter, the confidential status of the specified information and the limitations on its disclosure shall be governed solely by the applicable provisions of the Com-

mission's Rules of Practice, Part 3—Rules of Practice for Adjudicative Proceedings.

The Commission having considered and denied the motion of Chase Manhattan Corp., except for the limitations hereinabove allowed, full compliance with the subpoena, as modified, is hereby ordered. Return shall be made on the subpoena at the hour and place specified in the subpoena on September 12, 1975.

By direction of the Commission.

VIRGINIA M. HARDING,
Acting Secretary

REGISTERED MAIL
RETURN RECEIPT REQUESTED

cc: David Rockefeller, Chairman
Chase Manhattan Corp.
One Chase Manhattan Plaza
New York, New York 10005

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MELLON NATIONAL CORPORATION, *Plaintiff*, v. FEDERAL TRADE COMMISSION, an agency of the United States of America, and LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD and STEPHEN NYE, Members, Federal Trade Commission, *Defendants*.	75 Civ. 4449 (CES)

Plaintiff complains of the defendants as follows:

PARTIES, JURISDICTION, VENUE AND NATURE OF ACTION

1. Plaintiff, Mellon National Corporation ("MNC"), is a bank holding company incorporated under the laws of Pennsylvania and registered under the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 *et seq.* MNC, through its wholly-owned subsidiary Mellon Bank, N.A. ("Bank"), a national banking association, is engaged principally in commercial and retail banking and the provision of trust services. The principal places of business of MNC and the Bank are located in Allegheny County, Pennsylvania. MNC through the bank does business in the Southern District, New York.

2. Defendant Federal Trade Commission ("FTC") is a commission created by the Federal Trade Commission Act, 15 U.S.C. §§ 41 *et seq.* (the "FTC Act").

3. Defendant Lewis A. Engman is the Chairman of the FTC, and defendants Paul Rand Dixon, M. Elizabeth Hanford and Stephen A. Nye are Commissioners of the FTC. The individual defendants are sued in their official capacities.

4. This action arises under the Fourth and Fifth Amendments to the Constitution of the United States of America, under the FTC Act, the Clayton Anti-trust Act, 15 U.S.C. §§ 12 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, the National Bank Act, 12 U.S.C. §§ 21 *et seq.*, and the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 *et seq.*

5. This Court has jurisdiction of the subject matter of this action under 28 U.S.C. §§ 1331, 1337, 2201 and 2202 and 5 U.S.C. §§ 701-706. The amount in controversy exceeds $10,000, exclusive of interest and costs. An actual controversy, justiciable in character, exists between the parties; and the plaintiff seeks a declaration of its rights. The plaintiff is adversely affected and aggrieved by the agency action of the FTC.

6. Venue of this action is properly in this District under 28 U.S.C. § 1391(e).

7. Plaintiff brings this action seeking:

(a) review of the FTC decision and order dated August 21, 1975 ("Decision and Order") which denied in substantial part MNC's motion to quash or limit a Subpoena Duces Tecum ("Subpoena") issued by the FTC on June 10, 1975;

(b) a declaratory judgment that the Subpoena (a true and correct copy of which is attached hereto as Exhibit A), as modified by the Decision and Order (a

true and correct copy of which is attached hereto as Exhibit B), exceeds the power, authority and jurisdiction of the FTC; and

(c) a stay, injunction and other appropriate relief with respect to the Subpoena and the enforcement thereof.

Facts

8. Beginning in October, 1974, the Bank was requested by counsel for the Bureau of Competition of the FTC to submit its files and records for study and scrutiny by the FTC. A letter received by the Bank from the FTC in October, 1974 (said letter is undated) reveals that at that time the FTC sought only four categories of information from the Bank, specifically, information pertaining to other directorships held by Bank directors since January 1, 1960, Bank directors' involvment in Bank operations and impact on Bank policy, the relationship of the Bank business relationships with "energy companies" and Bank activities in connection with bidding on oil and gas leases.

9. Immediately following the Bank's receipt of the letter of the FTC in October, 1974, the Bank communicated several times with counsel for the FTC Bureau of Competition in an effort to ascertain with some degree of precision what documents and information were being sought by the FTC and the source of the FTC's authority.

10. On December 4, 1974, counsel for the Bank conferred with counsel for the Bureau of Competition concerning the FTC's requests for information. At the December 4 meeting Bank counsel agreed to furnish counsel for the Bureau of Competition with certain information regarding the identity and principal occupation of Bank directors since January 1, 1960, all of which information was already a matter of public record, but objected to giving any further information on

the grounds that the FTC lacked authority to investigate the Bank.

11. On December 19, 1974, Bank counsel mailed to counsel for the Bureau of Competition all of the information which had been promised at the meeting of December 4, 1974.

12. Thereafter by letter dated December 23, 1974, counsel for the Bureau of Competition tendered to Bank a demand that the Bank produce voluminous documents concerning, and written answers in response to questions relating to, a broad range of confidential Bank business matters, that the Bank produce dossiers on several members of its board of directors and that the Bank prepare and supply a detailed summary of the Bank's business relationships with two hundred corporations. The documents demanded by Bureau of Competition counsel went far beyond any authorized investigation of the FTC and included such matters as all minutes and agenda of meetings of MNC's and the Bank's boards of directors, entire credit files of Bank customers, detailed files and policy manuals relating to the Bank's internal business structure, etc. In addition, the Bureau of Competition counsel requested interviews with numerous Bank executive officers.

13. Bank counsel responded to the FTC's request of December 23, 1975, and reiterated the Bank's objections that, based upon statements made to it by an FTC employee, and the unusually broad, vague and uncertain character of the requests for information, it continued to appear that the FTC's purpose was to conduct an unauthorized investigation into the banking business of the Bank and that compliance with such request would necessarily entail a serious breach of the Bank's confidential relationship with its clientele.

14. On June 12, 1975, MNC was served by mail with the Subpoena. The Subpoena is addressed to James H. Higgins, Chairman of MNC.

15. The Subpoena, together with the Schedule of Documents attached thereto, demands the production of numerous books, papers and documents and the giving of testimony with respect to the structure, organization and general business activities not only of MNC but also of the Bank, all the subsidiaries, successors and predecessors of MNC and the Bank and any person acting or purporting to act in their behalf.

16. The scope of the Subpoena is even broader than the FTC request of December 23, 1974 and far exceeds the permissible authority and jurisdiction of the FTC under various statutes, including 12 U.S.C. § 484 and 15 U.S.C. §§ 18, 19, 21 and 41-57.

17. On July 2, 1975, MNC timely filed with the Secretary of the FTC a Motion to Quash or Limit the Subpoena, together with a supporting Memorandum, wherein MNC repeated the objections which it had raised to the FTC investigation during the preceding several months, *viz.*:

(a) the Subpoena contravenes the statutory prohibitions of 15 U.S.C. §§ 45 and 46 because it constitutes an attempt to investigate the banking business of MNC and its affiliates, as evidenced by, *inter alia*, the vast amount of subpoenaed material which is irrelevant to the FTC's current investigation of the energy industry;

(b) the Subpoena is defective in that it fails to identify with specificity the information sought and is overly broad, indefinite and vague in several respects;

(c) the Subpoena seeks a large volume of information which is totally unrelated to the FTC's investigation of the energy industry and compliance with its terms would be unduly burdensome and oppressive;

(d) the Subpoena seeks to discover matters disclosed to MNC and the Bank in confidence by cus-

tomers over many years, confidential internal business information which has been developed at great expense and has contributed to the success of MNC and the Bank in several fields of banking and confidential memoranda and other documents relating to, *inter alia,* evaluations of members of and potential candidates for the boards of directors of MNC and the Bank; and

(e) the Subpoena seeks information protected by the attorney-client privilege.

18. MNC and the Bank received no response from the Bureau of Competition staff and counsel to its Motion and Memorandum.

19. By letter dated August 21, 1975, the Secretary of the FTC transmitted to counsel for MNC the Decision and Order of the FTC with respect to MNC's July 2, 1975 Motion, wherein MNC's motion was granted in part and denied in part.

20. The Decision and Order specifies that return on the Subpoena shall be made on September 12, 1975, and effects certain minor modifications in the Schedule of Documents to the Subpoena, none of which modifications cures the irrelevant, burdensome and oppressive nature of the Subpoena and none of which limits the scope of the Subpoena to subjects within the jurisdiction of the FTC.

21. Although the FTC determines in its Decision and Order that most of the subpoenaed documents are confidential, the Decision and Order affords virtually no protection for the confidential information and instead provides only an illusory, temporary and *revocable* procedure for merely notifying MNC of its imminent release to third parties.

22. Similarly, while the Decision and Order purports to recognize the applicability of the attorney-client privilege to the Subpoena, it simultaneously destroys such privilege by requiring MNC to identify in writing each document withheld under claim of privilege.

23. In the event that MNC and its Chairman fail to comply with the Subpoena on September 12, 1975, they will be guilty of an offense under 15 U.S.C. § 50 and may be punished by fine and imprisonment.

24. Despite its modification by the Decision and Order the Subpoena still reaches beyond the jurisdiction of the FTC and violates the jurisdiction of other regulatory agencies as established by Congress in, inter alia, 12 U.S.C. § 484, 15 U.S.C. §§ 18, 19 and 21 and the FTC Act, unnecessarily threatens the privileged and confidential relations between MNC and the Bank and their counsel and clientele, remains vague, uncertain, unduly burdensome and oppressive and compels the production of a vast amount of documents and information unrelated to any investigation which the FTC is authorized to conduct.

25. For the reasons set forth in the preceding paragraph, the Subpoena constitutes a threat of irreparable injury to the Constitutional and statutory rights of MNC and its affiliates for which there exists no remedy at law.

WHEREFORE, Plaintiff MNC prays this Court to:

(a) enter judgment declaring that the FTC's Decision and Order and the FTC's Subpoena, as modified by the Decision and Order, are contrary to and violate the Constitution of the United States and applicable laws;

(b) enjoin the defendants from taking any action to enforce the Subpoena, as modified by the FTC's Decision and Order;

(c) stay, pending final judgment, any action seeking to enforce the Subpoena and any and all penalties for refusal to comply with the Subpoena; and

(d) grant such other and additional relief as may be appropriate.

Respectfully submitted,

KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON

By /s/ J. A. KATARINCIC
A Member of the Firm

1500 Oliver Building
Pittsburgh, Pennsylvania 15222
(412) 355-6500

and

CURTIS, MALLET-PREVOST, COLT & MOSLE

By /s/ PETER FLEMING, JR.
A Member of the Firm

100 Wall Street
New York, New York 10005
(212) 248-8111

Of Counsel:

Charles B. Jarrett, Jr., Esq.
Vice President and Counsel
Mellon National Corporation
Mellon Square
Pittsburgh, Pennsylvania 15230
(412) 232-4966

Exhibit "A"

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

To James H. Higgins, Chairman, Mellon National Corporation, Mellon Square, Pittsburgh, Pennsylvania 15230

You are hereby required to appear before Allee Ramadhan, an Attorney and Examiner of the Federal Trade Commission, at 2120 L Street, N.W., Room 402 in the City of Washington, D.C. on the 18th day of July, 1975, at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741 0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies of which are attached and made part hereof, for the purposes stated therein.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: See attached "Schedule of Documents"

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has hereunto set his hand and caused the seal of said Federal Trade Commission to be affixed at Washington, D.C., this 10th day of June, 1975.

KENNETH C. ANDERSON
Assistant Director, Bureau of Competition

Exhibit "A"

SCHEDULE OF DOCUMENTS

DEFINITIONS

As used herein:

(a) "Your bank" means the holding company, the bank, subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

(b) "Bank committee" means an organizational entity of your bank charged with any of the following responsibilities:

(i) asset and liability management,

(ii) sources and uses of funds evaluation,

(iii) promotion of quality and return on loan portfolios,

(iv) monitoring loan portfolio exposures,

(v) determination and/or coordination of loan pricing, credit and/or marketing policies, and

(vi) budget management and control.

(c) "Board committee" means an entity created, established or designated by the Board of Directors or provided for in the articles of incorporation or by-laws of your bank, whose membership is chosen in whole or in part from among the Board of Directors.

(d) "Credit policies" means courses of action, preferences, conditions, limitations, methods, procedures and practices pertaining to the acquisition, commitment and lending of funds.

(e) "Energy company" means any company that engaged in commercial activities in any of the following energy industries, either directly or through subsidiaries,

during the subpoena period or any part thereof: the exploration for, production, transmission by pipeline and/or sale of crude oil; the refining of crude oil; the transmission by pipeline and/or sale of gasoline or other motor fuels; the exploration for, production, transmission by pipeline, and/or sale of natural gas; the exploration for, mining, processing and/or sale of coal (except when engaged in by companies maintaining captive coal operations exclusively for internal use); the exploration for, development, mining, milling, conversion, enrichment, fabrication, processing, reprocessing and/or sale of nuclear energy resources; and/or the development, construction and sale of nuclear power plants and reactors.

(f) "Energy department" means the organizational unit (or units) of your bank in which the credit accounts of the Gulf Oil Corp. and the Consolidation Coal Co. are maintained.

(g) "Person" means any natural person, partnership, firm, corporation or association.

(h) "Documents" means all writings of every kind, including letters, telegrams, books, reports, files, records, memoranda, notes, minutes, calendar and diary entries, charts, tabulations, and transcriptions, tape, mechanical and electronic recordings and other memorializations of oral communications which are in the possession, custody or control of your bank. This term also includes reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody or control of your bank. The term documents further includes all punch cards or other cards, tapes or recordings used in data processing, together with the programming

instructions and other written materials necessary to understand or use such punch cards, tapes or other recordings.

Subpoena Period: Each paragraph in this Schedule of Documents covers the period from January 1, 1965, to the date of service of this subpoena unless otherwise specified.

DOCUMENTS TO BE PRODUCED

1. Articles of incorporation, articles of association, and by-laws of your bank.

2. Copies of the 10-K reports which your bank filed with the Securities and Exchange Commission during the subpoena period.

3. Such documents as will show*:

(a) the organization of your bank, including all departments, divisions, committees, working groups and other components;

(b) the names and titles of those persons holding executive positions in your bank, and the names of heads of departments, divisions, committees and headquarters working groups;

(c) statements of goals, strategies, plans of action for the growth, performance and development of your bank during the subpoena period to the extent that they apply to or affect the energy departments.

4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors.

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* In lieu of the documents demanded by paragraphs 3(a) and 3(b), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

Exhibit "A"

5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period.

6. With respect to each officer and director of an energy company who served on the Board of Directors of your bank or who was considered as a potential member of the Board of Directors during the subpoena period or any part thereof, whether elected to the board or not, provide such documents as will show:

(a) the name of the person,

(b) the company by which the person was employed or on the board of which he served,

(c) energy companies of which the person was a director,

(d) who recommended the person to be considered for membership on the board,

(e) conversations, discussions and other communications, whether written or oral among the officers and employees, committees or other organizational units of your bank regarding the evaluation of the person as a potential member of the Board of Directors of your bank,

(f) the reasons for the decision by your bank either to offer or decline to offer the person a membership on the Board of Directors of your bank,

(g) the date of the decision by your bank regarding whether to offer said person a membership on the Board of Directors,

(h) conversations, discussions or other communications between your bank and each potential director

and between your bank and the energy company with which the potential director was affiliated regarding his membership on the bank Board of Directors, and

(i) files of the chairman of the Board of Directors, president, executive vice president and senior vice presidents of your bank regarding the selection of persons to serve on its Board of Directors.

7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors during the subpoena period which:

(a) describe the duties and obligations of members of the Board of Directors, and

(b) describe the structure, policies or operations of your bank.

8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period:

(a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

9. With respect to each officer and employee of your bank who served or was asked to serve as a director of an energy company during the subpoena period or any part thereof, provide such documents as will show:

(a) the name of the person,

(b) the name(s) of the energy company(ies) on whose board(s) of directors he served or was asked to serve,

(c) the date(s) he joined the board(s) of the energy company(ies) or declined such service,

(d) the request(s) by the officer or employee for permission of your bank to serve on the board(s) of directors of the energy company(ies),

(e) conversations, discussions and other communications whether written or oral, among the officers and employees of your bank, or committees or other organizational units of your bank regarding the evaluation of the officer's or employee's request for approval of his service on another board of directors,

(f) the reasons for the decision of your bank to approve or disapprove the request, and if your bank gave its approval, the communication of that decision internally to the staff of your bank, and

(g) conversations, discussions or other communications between your bank and the energy company regarding the membership of said officer or employee on its board of directors.

10. Copies of all documents which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

11. With regard to meetings of the Board of Directors, the Executive Committee of the Board and the Examining Committee of the Board of your bank supply for the subpoena period:

(a) copies of agenda, and

(b) copies of all documents memorializing deliberations of their meetings at which directors who were simultaneously directors of energy companies were present.

12. With regard to all credit policies of your bank which were applicable to energy companies during the subpoena period or any part thereof, provide copies of energy department records and files (exclusive of customer files), copies of all communications among and between the Board of Directors, Board committees, Bank committees, energy departments, bank officers and bank directors and copies of any similar such documents relating or referring to:

(a) allocations and exposures by industry group, sub-group, purpose or type of loan;

(b) budget allotments and estimates of loan demand for any of the energy industries and any energy companies;

(c) portfolio growth and contraction, priorities among customers and recruitment of new customers: and,

(d) distinctions among firms by size, creditworthiness, relationship to your bank, geographic location and other business characteristics.

13. With regard to any energy department(s) of your bank such documents as will show for the subpoena period:

(a) the date of its formation;

(b) the reasons for its formation;

(c) a description of its purpose and functions;

(d) the names of bank officers and employees who served as members thereof, and their account assignments;

(e) recruitment and prospect lists of energy companies;

(f) annual budget commitments and estimates of loan demand for energy companies (whether or not their accounts are maintained in the energy departments);

(g) credit authorities of corporate lending officers;

(h) guidelines and criteria applicable to energy companies used in rating creditworthiness;

(i) copies of all reports, evaluations, transcripts and other documents submitted by management consultant firms or produced as the result of in house efforts dealing with the organization, reorganization, operations, policies and procedures of any of the energy departments; the organization, reorganization, operations, policies and procedures of your bank if they apply to or affect any of the energy departments or their interaction with other organizational units; and the role, participation and function of directors.

14. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply documents sufficient to identify for each year of the subpoena period:

(a) total credit commitments and arrangements extended;

(b) average and maximum credit actually used;

(c) general purpose, type and significant terms of each credit arrangement involving amounts in excess of $1,000,000*;

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* In lieu of the documents demanded by paragraph 14(c), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

(d) average and maximum time and demand deposits and balances maintained by the listed companies;

(e) other commercial, trust and operating services performed for the listed companies, the dollar value charged for each such service and the dollar value to your bank attributed to each such service provided by your bank.

15. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply:

(a) current desk files of lending officers;

(b) the following parts of credit files for the subpoena period:

(i) documents which are the work product of bank officers and employees relating or referring to meetings, negotiations, conversations and other business contacts with or about customers and any such documents consisting of impressions, comments, analyses and evaluations of customers or transactions with customers (both proposed and consummated),

(ii) correspondence and credit inquiries, and

(iii) commitment memoranda and executive (or other) committee approvals; and

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated business transactions during the subpoena period with any of the companies listed in the Appendix.

Exhibit "A"

APPENDIX

Continental Oil Co.

Diamond Shamrock Corp.

El Paso Natural Gas Co.

Gulf Oil Corp.

Lone Star Gas Co.

Exxon Corp.

Marathon Oil Co.

North American Coal Co.

Pennzoil Co.

Phillips Petroleum Co.

Rochester & Pittsburgh Coal Co.

Standard Oil Co. of Ohio

Sun Oil Co.

Texaco, Inc.

A-141

Resolution Directing Use of Compulsory Process in Nonpublic Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

FILE No. 741 0019

NATURE AND SCOPE OF INVESTIGATION:

To determine the extent and effects of direct and indirect interlocking directorates, and other interlocking personnel and business relationships among domestic petroleum companies and between such companies and financial institutions and to determine whether or not such interlocking relationships may be in violation of Section 8 of the Clayton Act or may result in unfair methods of competition or unfair acts or practices within the meaning of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice 16 C.F.R. 1.1, et seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: September 12, 1974

A-142

Resolution Directing Use of Compulsory Process in Non-Public Investigations

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the natural gas industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and a report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practices, 16 CFR 1.1 et. seq. and supplements thereto.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

A-143

Resolution Directing Use of Compulsory Process in Non-Public Investigations

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the coal industry and on all relevant activities of each segment of that industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

A-144

Resolution Directing Use of Compulsory Process in Non-Public Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the nuclear energy industry and on all relevant activities of each segment of that industry, including the production, sale and utilization of nuclear materials, the manufacture, sale, and utilization of nuclear power plant equipment, and other activities associated therewith, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

Exhibit B

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

August 21, 1975

Office of the Secretary

Joseph A. Katarincic, Esq.
Messrs. Kirkpatrick, Lockhart,
Johnson & Hutchison
1500 Oliver Building
Pittsburgh, Pennsylvania 15202

Re: Subpoena Duces Tecum Issued to
James H. Higgins, Chairman,
Mellon National Corp. on June 10, 1975
File No. 741 0019
Unnamed Energy Companies

DEAR MR. KATARINCIC:

This is in response to the motion of Mellon National Corp. to limit or quash the above-described subpoena. The motion is hereby granted in part and denied in part.

The Commission has decided to limit the subpoena in the following respects:

1. Under the section designated "*Definitions*," Part (a) is modified to read:

> (a) "Your bank" means Mellon National Corp., Mellon Bank, N.A., venture capital and equipment leasing subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

2. Part (h) is modified by adding after the last sentence of the definition of "Documents" the following sentence:

> Documents refers only to those located in the United States.

Exhibit B

3. Under the section designated "DOCUMENTS TO BE PRODUCED," Part (3)(c) is modified to read:

(c) statements of goals, strategies, plans of action for the growth, performance and development of your bank during the subpoena period to the extent that they apply to or affect the energy departments in their handling of energy company accounts.

4. Part (4) is modified to read:

4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors, if applicable to the selection of persons who were directors or officers of energy companies.

5. Part (5) is modified to read:

5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period, if used in the consideration of a person who was a director or officer of an energy company.

6. Part (7) is modified to read:

7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors who were simultaneously directors or officers of energy companies which:

(a) describe the duties and obligations of members of the Board of Directors, and

(b) describe the structure, policies or operations of your bank.

Exhibit B

7. Part (8) is modified to read:

8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period if applicable to service on the board of an energy company:

(a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

8. Part (10) is modified to read:

10. Copies of all documents, in the nature of summaries, reviews and digests, which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

9. Part (13) is modified to read:

13. With regard to any energy department(s) of your bank, with respect to its (their) handling of energy company accounts, such documents as will show for the subpoena period:

• • • •

10. Part (15)(c) is modified to read:

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank

committees, bank officers and bank directors dealing with potential and consummated credit transactions during the subpoena period with any of the companies listed in the Appendix involving amounts in excess of $1,000,000.

11. Privileged attorney-client communications demanded by the subpoena specifications need not be produced. However, in lieu of producing documents claimed to constitute privileged communication between attorney and client, Mellon National Corp. must submit a schedule identifying each document withheld under claim of such privilege and setting forth, for each such document, the reasons for the application of the privilege.

With the exception of the foregoing limitations and the assurances of confidential treatment described hereinbelow, the Commission has in all respects denied the relief requested in your motion, having made the following determinations with respect to the issues you have raised:

1. The investigational resolutions of April 16 and September 12, 1974 provide an adequate description of the scope and purposes of the Commission's investigation. *FTC* v. *Green*, 252 F. Supp. 153, 155-56 (S.D.N.Y. 1966).

You correctly observe that interlocking directorates between a bank and energy companies could not constitute a violation of Section 8 of the Clayton Act, 15 U.S.C. § 19, and the reference to Section 8 in the September 12 resolution concerns only the possibility of interlocking directorates between competing petroleum companies. Nevertheless, the investigation is intended alternately to examine whether certain interlocking relationships involving petroleum companies result in violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Furthermore, the overriding purpose of the investigation is to enable the Com-

mission to prepare for Congress a comprehensive study of the energy industry, pursuant to Pub. L. 93-135.

2. The Trans-Alaska Pipeline Authorization Act, Pub. L. 93-153, 87 Stat. 576 (1973) amended Section 6 of the Federal Trade Commission Act (15 U.S.C. § 46) to provide that the Commission may investigate banks "to the extent that such action is necessary to the investigation of any . . . industry which is not engaged . . . in banking." The amendment grants the Commission investigatory jurisdiction over banks with regard to all subjects "necessary" to the resolution of issues in an investigation of an industry not engaged in banking. The effect of the amendment is to define the permissible scope of an investigation touching on banks and to require that the subject matter of such an inquiry arise out of a matter properly under investigation—in this instance, competitive conditions in the energy industry.

As part of the Commission's Energy Study, its staff is examining the effects of interlocking directorates between energy companies and banks on competitive conditions in the energy industry. Since the availability of credit is highly important to the capital-intensive energy sector, the Commission's staff is investigating the possibility that interlocked energy companies or some segment of the industry with which they are identified receive preference in obtaining credit; the possibility that interlocked energy companies use their position to deny or limit credit available to their competitors or to a segment of the industry to which they are antagonistic; the possibility that interlocked energy companies have access to confidential credit file data of competitors; and the possibility that interlocked energy companies influence bank credit policies to encourage or inhibit various alternative energy sources and industry structures.

Necessary to the resolution of the investigatory issues just described is information concerning your client's allo-

cation of credit among energy companies represented on its board and those not represented, credit policies which dictate such allocation, reasons fo. choosing directors affiliated with energy companies, and reliance on those directors' advice and participation. Therefore, the Commission may properly compel production of the subpoenaed information in order to complete its inquiry into competitive conditions in the energy industry.

3. The nature and purpose of the investigation of an industry subject to the Commission's jurisdiction determines the permissible scope of the related investigation of a bank. Once this scope is established and the pertinent subject matter delineated, the Commission may demand the production of any documents reasonably relevant to that subject matter. *Adams* v. *FTC*, 296 F.2d 861, 866 (8th Cir. 1961), *cert. denied* 369 U.S. 864 (1962); *FTC* v. *Green*, 252 F. Supp. 153, 156 (S.D.N.Y. 1966); see also, *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950). Therefore, the standard of relevance which applies to subpoenas issued to banks does not differ from the standard applicable to non-banking corporations subject to the Commission's jurisdiction.

In this context, the Commission's investigative authority, as described by the Supreme Court in *United States* v. *Morton Salt Co., supra,* is extensive:

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has the power of inquisition, if one chooses to call it

that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend upon a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." 338 U.S. at 642-43.

The Court continued:

"Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the laws and the public interest." 338 U.S. at 652.

4. The phrase "to the extent . . . necessary" in the 1973 amendment to Section 6 of the Federal Trade Commission Act has the effect of delimiting the permissible scope of an investigation touching on banks. It does not require that information subpoenaed from a bank be demonstrably unavailable from any other source, nor that the Commission have exhaused every other possible avenue of inquiry before compelling a bank to produce documents.

In any event, relatively few documents to which the subpoena specifications apply are available from energy companies. Information similar to that required by specifications 14(a)-(d), and, in part, 14(e) may be in the possession of energy companies, but such information, in itself, would not reveal the form and context in which your client maintains it. Knowledge of how the information is kept may provide investigative leads and assist the Commission's staff in drawing inferences about several investigative issues.

5. The documents sought by the subpoena, as limited above, are both relevant and necessary to the exploration of

matters within the permissible scope of the Commission's investigation into competitive conditions in the energy industry.

All of the subpoenaed documents are relevant in one or more of the following respects:

First, relevant and necessary to the investigation are documents concerning the formation and purposes of the interlocking arrangements and the participation and influence of interlocked directors. Specifications 4, 5, 6, 7, 8, 9 and 11 are among those demanding this type of information.

Second, relevant and necessary to the investigation are documents concerning a bank's credit policies applicable to energy companies. These may reveal distinctions made between interlocked and non-interlocked companies. Specifications 3(c), 11, 12, and 13(e), (f) and (i) are among those demanding this type of information.

Third, relevant and necessary to the investigation are documents concerning a bank's dealings with energy companies. These may be used to identify and compare factors which determine which companies receive credit, on what terms and in which amounts. Specifications 3(c), 10, 14 and 15 are among those demanding this type of information.

In addition to these three substantive areas, certain information concerning a bank's organization and operating procedures is relevant and necessary to the investigation. Knowledge of these procedures is necessary to determining how directors' influence may be brought to bear within the bank. Specifications 1, 2, 3 and 13(a)-(d), (g)-(i) are among those demanding this type of information.

6. The Commission has examined the specifications of the subpoena and finds that, as limited above, the subpoena is neither overly broad nor unduly burdensome. Many of

the specifications are expressly limited to documents relevant to interlocked directors or interlocked energy companies. These are circumscribed classes. Other items seek information regarding specific policies which apply to energy companies or with respect to a limited list of energy companies.

While the subpoena demands the production of a substantial number of documents, this results from the extent and size of the bank's operations rather than from any undue demands of the subpoena. Inconvenience is relative and must be considered in relation to the size of the subpoenaed party. *Application of Radio Corp. of America.* 13 F. R. D. 167, 172 (S.D.N.Y. 1952). Moreover, breadth alone is not sufficient justification for refusing enforcement of a subpoena. *Adams* v. *FTC, supra* at 867. The test to be applied to claims of burdensomeness is not whether a burden has been imposed, but rather whether the subpoena is so unduly burdensome that compliance with it would clog the conduct of business. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186 (1945); *Genuine Parts Co.* v. *FTC,* 313 F. Supp. 855, 859 (N.D. Ga. 1969), *aff'd.* 445 F.2d 1382 (5th Cir. 1971). The subpoenaed party bears the burden of proving undue burdensomeness. *FTC* v. *Standard American, Inc.,* 306 F.2d 231, 235 (3rd. Cir. 1962). Nothing in the motion to quash persuades the Commission that production of the subpoenaed material would unduly disrupt your client's business. Furthermore, the Commission's own examination of the subpoena, as limited, discloses no undue burden.

7. In order to minimize the burden of production pursuant to the subpoena, the officer of the Commission who issued it is authorized to establish arrangements for Commission personnel to review and, as necessary, reproduce the subpoenaed documents on your client's premises. See § 2.7(a) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.7(a).

Exhibit B

8. Your request for oral argument is denied. There is no requirement that an opportunity for oral argument be provided in connection with a motion to quash an investigational subpoena, and the Commission has determined that oral argument will not be necessary in this instance.

The Commission regognizes that many of the subpoenaed documents may be regarded as sensitive business information. Therefore, in accordance with your request for a protective order, the Commission has decided to grant your client the following assurances with respect to the contents of all documents responsive to subpoena specifications 3 through 15, inclusive:

1. Pursuant to the Commission's tentative determination of confidentiality, the Secretary of the Commission will deny any request made under the Freedom of Information Act for access to any of the protected documents or to any copies, tabulations, digests, or summaries thereof prepared by the Commission, its staff or consultants.

2. In the event an appeal is taken from the Secretary's denial of such an access request, your client will be promptly notified of the pendency of such appeal and afforded seven days within which to file a written response with the Commission.

3. Thereafter, if the Commission determines that any or all of the documents to which access is sought are not exempt from mandatory disclosure pursuant to the Freedom of Information Act, or that they are exempt but the Commission will exercise its discretion to release them, the Commission will immediately advise your client of its decision and further advise it that the documents will be delivered to the requesting party within five days.

4. The Commission will not release upon its own motion any of the protected documents or their contents to

any person outside the employ of the Commission, without first giving your client ten days' notice of its intention to do so.

The foregoing assurances will not apply to the Commission's furnishing information in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process. In the event of such release, the Congressional committee or subcommittee or the court will be advised that your client considers the material to be confidential, and your client will, if possible, be afforded prior notice.

The Commission further exempts from the foregoing assurances its furnishing the documents to an outside consultant retained by the Commission. However, only a consultant who has agreed not to release the documents may be given access to them.

The foregoing assurances shall be effective for a period of three years from the date of this letter, at the end of which time the commitment may be extended upon a showing of justification.

The foregoing assurances do not apply to any information which (1) is now in the public domain; (2) enters the public domain from a source other than the Commission or its employees; (3) was in the Commission's possession prior to disclosure to the Commission pursuant to this subpoena; or (4) is supplied to the Commission or its employees by a third party lawfully in possession thereof. Nothing in the foregoing sentence, however, will constitute a waiver by your client of any restrictions imposed by law on the Commission's use of any such information, however obtained.

The foregoing assurances are given with the understanding that in the event of issuance of an adjudicative complaint in this matter, the confidential status of the specified

information and the limitations on its disclosure shall be governed solely by the applicable provisions of the Commission's Rules of Practice, Part 3—Rules of Practice for Adjudicative Proceedings.

The Commission having considered and denied the motion of Mellon National Corp., except for the limitations hereinabove allowed, full compliance with the subpoena, as modified, is hereby ordered. Return shall be made on the subpoena at the hour and place specified in the subpoena on September 12, 1975.

By direction of the Commission.

VIRGINIA M. HARDING
Acting Secretary

REGISTERED MAIL
RETURN RECEIPT REQUESTED

cc: James H. Higgins, Chairman
Mellon National Corp.
Mellon Square
Pittsburgh, Pennsylvania 15230

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEMICAL NEW YORK CORPORATION, and CHEMICAL BANK, *Plaintiffs,* *against* FEDERAL TRADE COMMISSION; and LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN NYE, Members, Federal Trade Commission, *Defendants.*	75 Civ. 4478 COM JUDGE MOTLEY

Plaintiffs, for their complaint, aver

1. Plaintiff, Chemical Bank, is a corporation organized and existing under the banking laws of the State of New York, with its principal office at 20 Pine Street, City, County and State of New York.

2. Plaintiff, Chemical New York Corporation, is a bank holding company incorporated under the laws of Delaware in 1968, with its principal place of business in the State of New York, within this District. Chemical New York Corporation is registered under the Bank Holding Company Act, 12 U.S.C. §§ 1841 *et seq.*, and Chemical Bank is its principal subsidiary.

3. Defendant, Federal Trade Commission ("FTC"), is a commission created and established by the Federal Trade Commission Act, 15 U.S.C. §§ 41 *et seq.*, (the "FTC Act").

4. Defendant, Lewis A. Engman, is the Chairman of the FTC, and defendants Paul Rand Dixon, M. Elizabeth Hanford and Stephen A. Nye are Commissioners of the FTC. All said individual defendants are sued in their official capacities.

5. This action arises under the Fourth and Fifth Amendments to the Constitution of the United States of America, and under the FTC Act 15 U.S.C. §§ 41 *et seq.*, the Clayton Act, 15 U.S.C. §§ 12 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 *et seq.*

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 2201, and 2202 and 5 U.S.C. §§ 701-706. The amount in controversy exceeds the sum of $10,000, exclusive of interest and costs. There exists between the parties an actual controversy, justiciable in character, in respect of which plaintiffs require a declaration of their rights.

7. Plaintiffs bring this action seeking:

(a) review of agency action consisting of an administrative decision and order of the FTC denying a motion by the Chairman of Chemical New York Corporation, Donald C. Platten, to limit or quash a subpoena duces tecum issued by the FTC;

(b) a declaratory judgment that said subpoena duces tecum, as modified by the administrative decision and order, is in excess of the delegated powers of the FTC, beyond its investigatory authority and jurisdiction, and in violation of the Fourth and Fifth Amendments to the Constitution of the United States of America; and

(c) a stay, an injunction and such other relief as is appropriate, with respect to the subpoena duces tecum and its enforcement.

8. The FTC issued a Subpoena Duces Tecum, dated June 10, 1975 (the "Subpoena"), addressed to the Chairman of Chemical New York Corporation directing an appearance before Allee A. Ramadhan, an attorney and examiner of the FTC, on July 18, 1975, at 10:00 a.m., in Washington, D.C. for testimony in connection with the FTC's investigation captioned File No. 741-0019, pursuant to FTC Resolutions dated April 16, 1974, and September 12, 1974, and production at that time and place of the books, papers and documents identified in the "Schedule of Documents" attached to the Subpoena. A copy of the Subpoena received by Chemical New York Corporation on June 13, 1975 (including copies of said FTC Resolutions) is attached hereto as Exhibit A.

9. The subpoena demanded the production of vast quantities of records falling within fifty-five categories and subcategories of documents, specified in its nine-page, single-spaced "Schedule of Documents". It encompassed virtually all bank files, wherever located, including "current desk files of lending officers", relating to each of sixteen energy companies listed in a separate "Appendix". The subpoena covered the period from January 1, 1965, to the date of its service, called for records of "the holding company, the bank, subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf", and, with few exceptions, framed its demands in terms of "documents as will show", "documents sufficient to identify", or "documents relating or referring to" various categories of information and transactions.

10. The Chairman of Chemical New York Corporation and Chemical Bank filed a motion, dated July 7, 1975, with the FTC to modify and limit the Subpoena to relevant matters within the jurisdiction and investigatory authority of

the FTC, or in lieu thereof to quash the Subpoena. Said motion challenged the subpoena, upon the grounds that:

(a) the Subpoena seeks production of books, papers and documents of Chemical New York Corporation, Chemical Bank, subsidiaries, successors and predecessors of each which are not subject to the jurisdiction of the Federal Trade Commission;

(b) the books, papers and documents demanded by the Subpoena are not specified to be such that could be subject to the investigatory authority of the Federal Trade Commission under §§ 6, 9 and 10 of the FTC Act, as amended, and the Commission's Procedures and Rules of Practice;

(c) the material sought by the Subpoena is not limited to information specified as necessary to the investigation of a corporation, group of corporations, or industry not engaged, or engaged only incidentally, in banking;

(d) the Subpoena represented an unauthorized and unlawful attempt by the FTC staff to investigate the banking industry, and the limited qualification to the exception of banks from FTC jurisdiction contained in § 6(b) of the FTC Act did not warrant the Subpoena; and

(e) the Subpoena sought irrelevant material and was burdensome and oppressive.

11. No written response from staff counsel to the motion described in paragraph 10 herein has been received.

12. By letter dated August 21, 1975, from the Acting Secretary of the FTC, a copy of which is attached as Exhibit B (the "Decision and Order"), the FTC ruled on the July 7, 1975, motion.

13. The Decision and Order makes certain specified changes in the "Definitions" and schedule of "Documents to be Produced" in the Subpoena.

14. The scope of the Subpoena, as modified by the Decision and Order, remains beyond the jurisdiction and investigatory authority of the FTC and is in excess of its delegated powers and contrary to specific prohibitions in the FTC Act, the Clayton Act, and the Bank Holding Company Act. The changes in the Subpoena effected by the Decision and Order are principally typographical and do not in fact narrow the range of the Subpoena to permissible bounds. The Subpoena, as modified, continues to constitute an unauthorized and unlawful inquiry by the FTC into banks and the banking industry. It's scope is so broad and general as to be unreasonably burdensome, in violation of the Fourth and Fifth Amendments to the Constitution of the United States of America.

15. The confidentiality of the banker-customer relationship is expressly recognized and protected by Federal Statutes, such as 18 U.S.C. § 1906 (providing criminal sanctions applicable both to public and private examiners for unauthorized disclosure). In contrast, the purported "assurances" of the FTC contained in the Decision and Order (Exhibit B, pp. 7-8) would destroy that confidentiality.

16. The Subpoena, as modified, is a present and continuing threat of irreparable injury to Chemical Bank and Chemical New York Corporation, neither of which have a prompt, adequate or effective remedy at law. This action is necessary for the protection of their Constitutional and statutory rights.

WHEREFORE, plaintiffs pray that this Court:

(i) Enter judgment declaring that the decisions and determinations set forth in the FTC's Decision and Order

dated August 21, 1975, and the Subpoena as modified thereby, are contrary to, and in violation of, the Constitution of the United States and applicable law;

(ii) Enjoin the defendants from taking any action to enforce the Subpoena, as modified;

(iii) Stay, pending final judgment, any action seeking to enforce the Subpoena, or any penalties against plaintiffs for refusal to comply with the Subpoena; and

(iv) Grant such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
September 11, 1975

CRAVATH, SWAINE & MOORE,

by RALPH L. MCAFEE
a member of the firm

Attorneys for Plaintiffs,
One Chase Manhattan Plaza,
New York, N. Y. 10005
(212) 422-3000

Exhibit A

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

To DONALD C. PLATTEN, *Chairman*,
Chemical New York Corporation,
20 Pine Street,
New York, New York 10015

You are hereby required to appear before Allee A. Ramadhan, an Attorney and Examiner of the Federal Trade Commission, at 2120 L Street, N.W., Room 402 in the City of Washington, D.C. on the 18th day of July, 1975, at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741 0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies of which are attached and made part hereof, for the purposes stated therein.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: See attached "Schedule of Documents"

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has hereunto set his hand and caused the seal of said Federal Trade Commission to be affixed at Washington, D.C., this 10th day of June, 1975

KENNETH C. ANDERSON
Assistant Director, Bureau of Competition

Exhibit A

SCHEDULE OF DOCUMENTS

Definitions

As used herein:

(a) "Your bank" means the holding company, the bank, subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

(b) "Bank committee" means an organizational entity of your bank charged with any of the following responsibilities:

(i) asset and liability management,

(ii) sources and uses of funds evaluation,

(iii) promotion of quality and return on loan portfolios,

(iv) monitoring loan portfolio exposures,

(v) determination and/or coordination of loan pricing, credit and/or marketing policies, and

(vi) budget management and control.

(c) "Board committee" means an entity created, established or designated by the Board of Directors or provided for in the articles of incorporation or by-laws of your bank, whose membership is chosen in whole or in part from among the Board of Directors.

(d) "Credit policies" means courses of action, preferences, conditions, limitations, methods, procedures and practices pertaining to the acquisition, commitment and lending of funds.

(e) "Energy company" means any company that engaged in commercial activities in any of the following energy industries, either directly or through subsidiaries, during the subpoena period or any part thereof: the ex-

ploration for, production, transmission by pipeline and/or sale of crude oil; the refining of crude oil; the transmission by pipeline and/or sale of gasoline or other motor fuels; the exploration for, production, transmission by pipeline, and/or sale of natural gas; the exploration for, mining, processing and/or sale of coal (except when engaged in by companies maintaining captive coal operations exclusively for internal use); the exploration for, development, mining, milling, conversion, enrichment, fabrication, processing, reprocessing and/or sale of nuclear energy resources; and/or the development, construction and sale of nuclear power plants and reactors.

(f) "Energy department" means any organizational unit of your bank specializing in whole or part in any of the energy industries.

(g) "Person" means any natural person, partnership, firm, corporation or association.

(h) "Documents" means all writings of every kind, including letters, telegrams, books, reports, files, records, memoranda, notes, minutes, calendar and diary entries, charts, tabulations, and transcriptions, tape, mechanical and electronic recordings and other memorializations of oral communications which are in the possession, custody or control of your bank. This term also includes reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody or control of your bank. The term documents further includes all punch cards or other cards, tapes or recordings used in data processing, together with the programming instructions and other written materials necessary to understand or use such punch cards, tapes or other recordings.

Exhibit A

Subpoena Period: Each paragraph in this Schedule of Documents covers the period from January 1, 1965, to the date of service of this subpoena unless otherwise specified.

DOCUMENTS TO BE PRODUCED

1. Articles of incorporation, articles of association, and by-laws of your bank.

2. Copies of the 10-K reports which your bank filed with the Securities and Exchange Commission during the subpoena period.

3. Such documents as will show*:

(a) the organization of your bank, including all departments, divisions, committees, working groups and other components;

(b) the names and titles of those persons holding executive positions in your bank, and the names of heads of departments, divisions, committees and headquarters working groups;

(c) statements of goals, strategies, plans of action for the growth, performance and development of your bank during the subpoena period to the extent that they apply to or affect the energy departments.

4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors.

5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other

* In lieu of the documents demanded by paragraphs 3(a) and 3(b), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period.

6. With respect to each officer and director of an energy company who served on the Board of Directors of your bank or who was considered as a potential member of the Board of Directors during the subpoena period or any part thereof, whether elected to the board or not, provide such documents as will show:

(a) the name of the person,

(b) the company by which the person was employed or on the board of which he served,

(c) energy companies of which the person was a director,

(d) who recommended the person to be considered for membership on the board,

(e) conversations, discussions and other communications, whether written or oral among the officers and employees, committees or other organizational units of your bank regarding the evaluation of the person as a potential member of the Board of Directors of your bank,

(f) the reasons for the decision by your bank either to offer or decline to offer the person a membership on the Board of Directors of your bank,

(g) the date of the decision by your bank regarding whether to offer said person a membership on the Board of Directors,

(h) conversations, discussions or other communications between your bank and each potential director and between your bank and the energy company with which the potential director was affiliated regarding his membership on the bank Board of Directors, and

(i) files of the chairman of the Board of Directors, president, executive vice president and senior vice presidents of your bank regarding the selection of persons to serve on its Board of Directors.

7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors during the subpoena period which:

(a) describe the duties and obligations of members of the Board of Directors, and

(b) describe the structure, policies or operations of your bank.

8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period:

(a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

9. With respect to each officer and employee of your bank who served or was asked to serve as a director of an energy company during the subpoena period or any part thereof, provide such documents as will show:

(a) the name of the person,

(b) the name(s) of the energy company(ies) on whose board(s) of directors he served or was asked to serve,

(c) the date(s) he joined the board(s) of the energy company(ies) or declined such service,

(d) the request(s) by the officer or employee for permission of your bank to serve on the board(s) of directors of the energy company(ies),

(e) conversations, discussions and other communications whether written or oral, among the officers and employees of your bank, or committees or other organizational units of your bank regarding the evaluation of the officer's or employee's request for approval of his service on another board of directors,

(f) the reasons for the decision of your bank to approve or disapprove the request, and if your bank gave its approval, the communication of that decision internally to the staff of your bank, and

(g) conversations, discussions or other communications between your bank and the energy company regarding the membership of said officer or employee on its board of directors.

10. Copies of all documents which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

11. With regard to meetings of the Board of Directors, the Executive Committee of the Board and the Examining Committee of the Board of your bank supply for the subpoena period:

(a) copies of agenda, and

(b) copies of all documents memorializing deliberations of their meetings at which directors who were

simultaneously directors of energy companies were present.*

12. With regard to all credit policies of your bank which were applicable to energy companies during the subpoena period or any part thereof, provide copies of energy department records and files (exclusive of customer files), copies of all communications among and between the Board of Directors, Board committees, Bank committees, energy departments, bank officers and bank directors and copies of any similar such documents relating or referring to:

(a) allocations and exposures by industry group, sub-group, purpose or type of loan;

(b) budget allotments and estimates of loan demand for any of the energy industries and any energy companies;

(c) portfolio growth and contraction, priorities among customers and recruitment of new customers; and,

(d) distinctions among firms by size, creditworthiness, relationship to your bank, geographic location and other business characteristics.

13. With regard to any energy department(s) of your bank such documents as will show for the subpoena period:

(a) the date of its formation;

(b) the reasons for its formation;

(c) a description of its purpose and functions;

(d) the names of bank officers and employees who served as members thereof, and their account assignments;

---

* Exclude from the definition of documents, for item 11(b), typewritten minutes.

(e) recruitment and prospect lists of energy companies;

(f) annual budget commitments and estimates of loan demand for energy companies (whether or not their accounts are maintained in the energy departments);

(g) credit authorities of corporate lending officers;

(h) guidelines and criteria applicable to energy companies used in rating creditworthiness;

(i) copies of all reports, evaluations, transcripts and other documents submitted by Booz, Allen & Hamilton, Inc. or other such management consultant firms or produced as the result of in house efforts dealing with the organization, reorganization, operations, policies and procedures of any of the energy departments; the organization, reorganization, operations, policies and procedures of your bank if they apply to or affect any of the energy departments or their interaction with other organizational units; and the role, participation and function of directors.

14. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply documents sufficient to identify for each year of the subpoena period:

(a) total credit commitments and arrangements extended;

(b) average and maximum credit actually used;

(c) general purpose, type and significant terms of each credit arrangement involving amounts in excess of $1,000,000*;

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* In lieu of the documents demanded by paragraph 14(c), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

(d) average and maximum time and demand deposits and balances maintained by the listed companies;

(e) other commercial, trust and operating services performed for the listed companies, the dollar value charged for each such service and the dollar value to your bank attributed to each such service provided by your bank.

15. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply:

(a) current desk files of lending officers;

(b) the following parts of credit files for the subpoena period:

(i) documents which are the work product of bank officers and employees relating or referring to meetings, negotiations, conversations and other business contacts with or about customers and any such documents consisting of impressions, comments, analyses and evaluations of customers or transactions with customers (both proposed and consummated),

(ii) correspondence and credit inquiries, and

(iii) commitment memoranda and executive (or other) committee approvals; and

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated business transactions during the subpoena period with any of the companies listed in the Appendix.

Exhibit A

APPENDIX

Amerada Hess Corp.

Anaconda Co.

Alaska Interstate Co.

Commonwealth Oil & Refining Co.

Cities Service Co.

Exxon Corp.

Gulf Oil Corp.

Hillman Co.

Murphy Oil Corp.

Mobil Oil Corp.

Pennzoil Co.

Standard Oil Co. of California

Standard Oil Co. of Indiana

Texas Gas Transmission Co.

Texaco, Inc.

Union Oil Co. of California

A-174

Resolution Directing Use of Compulsory Process in Nonpublic Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

FILE No. 741 0019

NATURE AND SCOPE OF INVESTIGATION:

To determine the extent and effects of direct and indirect interlocking directorates, and other interlocking personnel and business relationships among domestic petroleum companies and between such companies and financial institutions and to determine whether or not such interlocking relationships may be in violation of Section 8 of the Clayton Act or may result in unfair methods of competition or unfair acts or practices within the meaning of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

AUTHORITY TO CONDUCT INVESTIGATION:

Sections 6, 9, and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice 16 C.F.R. 1.1, et seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: September 12, 1974

A-175

Resolution Directing Use of Compulsory Process in Non-Public Investigations

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the natural gas industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and a report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

A-176

Resolution Directing Use of Compulsory Process in Non-Public Investigations

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the coal industry and on all relevant activities of each segment of that industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

A-177

Resolution Directing Use of Compulsory Process in Non-Public Investigation

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the nuclear energy industry and on all relevant activities of each segment of that industry, including the production, sale and utilization of nuclear materials, the manufacture, sale, and utilization of nuclear power plant equipment, and other activities associated therewith, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 16 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHARLES A. TOBIN
Secretary

Dated: April 16, 1974

A-178

Standard Form 1157
September 1978
4 Treasury FRM 2000
1317-106

RETURN TO STANDARD FORM 1157

CLAIM FOR FEES AND MILEAGE OF WITNESS

Sheet No. .....

U.S. FEDERAL TRADE COMMISSION
(Department, Bureau or Establishment)

Case No. 741 0019 *

Name ..... Address .....

Dates of travel ..... Dates of attendance .....

Date and hour discharged from further attendance .....

For travel from ..... to ..... and return

Via *(mode of travel must be specified)* .....

	Dollars	Cents	Notations
..... miles traveled at 10 cents per mile *(number of round trips .....)*			
..... days in attendance and time necessarily occupied in going to and returning from place of attendance at $ 20 per day			
..... days in attendance and time necessarily occupied in going to and returning from place of attendance at $ 16 per day in lieu of subsistence			
AMOUNT CLAIMED			
Less Amount previously advanced			
NET AMOUNT DUE			

I certify that the amounts claimed above are correct and just; that payment has not been received; and that at time of travel and attendance I was NOT a salaried employee of the Government or a detained witness.

(Payee will NOT use this space)

Differences .....

Amount verified; correct for .....

SIGN ORIGINAL ONLY ..... (Payee's signature)

Signature or initials .....

Paid by Check No. .....

Paid by Cash, $ .....

Approved for $ ..... By .....
(Signature of payee)

Date ..... Title .....
(Date)

U.S. GOVERNMENT PRINTING OFFICE: 1978 O—330-871

Exhibit B

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

August 21, 1975

RICHARD S. SIMMONS, ESQ.
Messrs. Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: Subpoena Duces Tecum Issued on
June 10, 1975 to Donald C. Platten,
Chairman, Chemical New York Corp.
File No. 741 0019
Unnamed Energy Companies

Dear Mr. Simmons:

This is in response to the motion of Donald C. Platten to limit or quash the above-described subpoena. The motion is hereby granted in part and denied in part.

The Commission has decided to limit the subpoena in the following respects:

1. Under the section designated "*Definitions,*" Part (a) is modified to read:

> (a) "Your bank" means Chemical New York Corp., Chemical Bank, venture capital and equipment leasing subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

2. Part (h) is modified by adding after the last sentence of the definition of "Documents" the following sentence:

> Documents refers only to those located in the United States.

Exhibit B

3. Under the section designated "DOCUMENTS TO BE PRODUCED", Part (4) is modified to read:

> 4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors, if applicable to the selection of persons who were directors or officers of energy companies.

4. Part (5) is modified to read:

> 5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period, if used in the consideration of a person who was a director or officer of an energy company.

5. Part (7) is modified to read:

> 7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors who were simultaneously directors or officers of energy companies which:
>
> (a) describe the duties and obligations of members of the Board of Directors, and
>
> (b) describe the structure, policies or operations of your bank.

6. Part (8) is modified to read:

> 8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period if applicable to service on the board of an energy company:
>
> (a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

7. Part (10) is modified to read:

10. Copies of all documents, in the nature of summaries, reviews and digests, which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

8. Part (15)(c) is modified to read:

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated credit transactions during the subpoena period with any of the companies listed in the Appendix involving amounts in excess of $1,000,000.

In all other respects, the Commission has denied the motion, having made the following determinations with respect to the issues you have raised:

1. The Trans-Alaska Pipeline Authorization Act, Pub. L. 93-153, 87 Stat. 576 (1973) amended Section 6 of the

Exhibit B

Federal Trade Commission Act (15 U.S.C. § 46) to provide that the Commission may investigate banks "to the extent that such action is necessary to the investigation of any . . . industry which is not engaged . . . in banking." The amendment grants the Commission investigatory jurisdiction over banks with regard to all subjects "necessary" to the resolution of issues in an investigation of an industry not engaged in banking. The effect of the amendment is to define the permissible scope of an investigation touching on banks and to require that the subject matter of such an inquiry arise out of a matter properly under investigation—in this instance, competitive conditions in the energy industry.

As part of the Commission's Energy Study, its staff is examining the effects of interlocking directorates between energy companies and banks on competitive conditions in the energy industry. Since the availability of credit is highly important to the capital-intensive energy sector, the Commission's staff is investigating the possibility that interlocked energy companies or some segment of the industry with which they are identified receive preference in obtaining credit; the possibility that interlocked energy companies use their position to deny or limit credit available to their competitors or to a segment of the industry to which they are antagonistic; the possibility that interlocked energy companies have access to confidential credit file data of competitors; and the possibility that interlocked energy companies influence bank credit policies to encourage or inhibit various alternative energy sources and industry structures.

Necessary to the resolution of the investigatory issues just described is information concerning your client's allocation of credit among energy companies represented on its board and those not represented, credit policies which

dictate such allocation, reasons for choosing directors affiliated with energy companies, and reliance on those directors' advice and participation. Therefore, the Commission may properly compel production of the subpoenaed information in order to complete its inquiry into competitive conditions in the energy industry.

2. The nature and purpose of the investigation of an industry subject to the Commission's jurisdiction determines the permissible scope of the related investigation of a bank. Once this scope is established and the pertinent subject matter delineated, the Commission may demand the production of any documents reasonably relevant to that subject matter. *Adams* v. *FTC*, 296 F.2d 861, 866 (8th Cir. 1961), *cert. denied* 369 U.S. 864 (1962); *FTC* v. *Green*, 252 F. Supp. 153, 156 (S.D.N.Y. 1966); see also, *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950). Therefore, the standard of relevance which applies to subpoenas issued to banks does not differ from the standard applicable to non-banking corporations subject to the Commission's jurisdiction.

In this context, the Commission's investigative authority, as described by the Supreme Court in *United States* v. *Morton Salt Co., supra,* is extensive:

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has the power of inquisition, if one chooses to call it that, which is not derived from the judicial function.

> It is more analogous to the Grand Jury, which does not depend upon a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." 338 U.S. at 642-43.

The Court continued:

> "Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." 338 U.S. at 652.

3. The documents sought by the subpoena, as limited above, are both relevant and necessary to the exploration of matters within the permissible scope of the Commission's investigation into competitive conditions in the energy industry.

All of the subpoenaed documents are relevant in one or more of the following respects:

First, relevant and necessary to the investigation are documents concerning the formation and purposes of the interlocking arrangements and the participation and influence of interlocked directors. Specifications 4, 5, 6, 7, 8, 9 and 11 are among those demanding this type of information.

Second, relevant and necessary to the investigation are documents concerning a bank's credit policies applicable to energy companies. These may reveal distinctions made between interlocked and non-interlocked companies. Specifications 3(c), 11, 12, and 13(e), (f) and (i) are among those demanding this type of information.

Third, relevant and necessary to the investigation are documents concerning a bank's dealings with energy com-

panies. These may be used to identify and compare factors which determine which companies receive credit, on what terms and in which amounts. Specifications 3(c), 10, 14 and 15 are among those demanding this type of information.

In addition to these three substantive areas, certain information concerning a bank's organization and operating procedures is relevant and necessary to the investigation. Knowledge of these procedures is necessary to determining how directors' influence may be brought to bear within the bank. Specifications 1, 2, 3 and 13(a)-(d), (g)-(i) are among those demanding this type of information.

4. The Commission has examined the specifications of the subpoena and finds that, as limited above, the subpoena is neither overly broad nor unduly burdensome. Many of the specifications are expressly limited to documents relevant to interlocked directors or interlocked energy companies. These are circumscribed classes. Other items seek information regarding specific policies which apply to energy companies or with respect to a limited list of energy companies.

While the subpoena demands the production of a substantial number of documents, this results from the extent and size of the bank's operations rather than from any undue demands of the subpoena. Inconvenience is relative and must be considered in relation to the size of the subpoenaed party. *Application of Radio Corp. of America,* 13 F. R. D. 167, 172 (S.D.N.Y. 1952). Moreover, breadth alone is not sufficient justification for refusing enforcement of a subpoena. *Adams* v. *FTC, supra* at 867. The test to be applied to claims of burdensomeness is not whether a burden has been imposed, but rather whether the subpoena is so unduly burdensome that compliance with it would clog the conduct of business. *Oklahoma Press Publishing Co.* v.

Walling, 327 U.S. 186 (1945); *Genuine Parts Co.* v. *FTC*, 313 F. Supp. 855, 859 (N.D. Ga. 1969), *aff'd.* 445 F.2d 1382 (5th Cir. 1971). The subpoenaed party bears the burden of proving undue burdensomeness. *FTC* v. *Standard American, Inc.*, 306 F.2d 231, 235 (3rd. Cir. 1962). Nothing in the motion to quash persuades the Commission that production of the subpoenaed material would unduly disrupt your client's business. Furthermore, the Commission's own examination of the subpoena, as limited, discloses no undue burden.

5. In order to minimize the burden of production pursuant to the subpoena, the officer of the Commission who issued it is authorized to establish arrangements for Commission personnel to review and, as necessary, reproduce the subpoenaed documents on your client's premises. See § 2.7(a) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.7(a).

Although you have not raised the attorney-client privilege as an objection to the subpoena, the Commission recognizes the possibility that the specifications may encompass certain privileged communications between attorney and client. Therefore, the Commission has determined that such communications need not be produced. However, in lieu of producing documents claimed to constitute privileged attorney-client communications, your client must submit a schedule identifying each document withheld under claim of such privilege and setting forth, for each such document, the reasons for the application of the privilege.

The Commission further recognizes that many of the subpoenaed documents may be regarded as sensitive business information. Therefore, the Commission has decided to grant your client the following assurances with respect

to the contents of all documents responsive to subpoena specifications 3 through 15, inclusive:

1. Pursuant to the Commission's tentative determination of confidentiality, the Secretary of the Commission will deny any request made under the Freedom of Information Act for access to any of the protected documents or to any copies, tabulations, digests, or summaries thereof prepared by the Commission, its staff or consultants.

2. In the event an appeal is taken from the Secretary's denial of such an access request, your client will be promptly notified of the pendency of such appeal and afforded seven days within which to file a written response with the Commission.

3. Thereafter, if the Commission determines that any or all of the documents to which access is sought are not exempt from mandatory disclosure pursuant to the Freedom of Information Act, or that they are exempt but the Commission will exercise its discretion to release them, the Commission will immediately advise your client of its decision and further advise it that the documents will be delivered to the requesting party within five days.

4. The Commission will not release upon its own motion any of the protected documents or their contents to any person outside the employ of the Commission, without first giving your client ten days' notice of its intention to do so.

The foregoing assurances will not apply to the Commission's furnishing information in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process. In the event

of such release, the Congressional committee or subcommittee or the court will be advised that your client considers the material to be confidential, and your client will, if possible, be afforded prior notice.

The Commission further exempts from the foregoing assurances its furnishing the documents to an outside consultant retained by the Commission. However, only a consultant who has agreed not to release the documents may be given access to them.

The foregoing assurances shall be effective for a period of three years from the date of this letter, at the end of which time the commitment may be extended upon a showing of justification.

The foregoing assurances do not apply to any information which (1) is now in the public domain; (2) enters the public domain from a source other than the Commission or its employees; (3) was in the Commission's possession prior to disclosure to the Commission pursuant to this subpoena; or (4) is supplied to the Commission or its employees by a third party lawfully in possession thereof. Nothing in the foregoing sentence, however, will constitute a waiver by your client of any restrictions imposed by law on the Commission's use of any such information, however obtained.

The foregoing assurances are given with the understanding that in the event of issuance of an adjudicative complaint in this matter, the confidential status of the specified information and the limitations on its disclosure shall be governed solely by the applicable provisions of the Commission's Rules of Practice, Part 3—Rules of Practice for Adjudicative Proceedings.

The Commission having considered and denied the motion of Mr. Platten, except for the limitations hereinabove allowed, full compliance with the subpoena, as modified, is

Exhibit B

hereby ordered. Return shall be made on the subpoena at the hour and place specified in the subpoena on September 15, 1975.

By direction of the Commission.

VIRGINIA M. HARDING,
Acting Secretary

REGISTERED MAIL
RETURN RECEIPT REQUESTED

cc: Donald C. Platten, Chairman
Chemical New York Corp.
20 Pine Street
New York, New York 10015

REGISTERED MAIL
RETURN RECEIPT REQUESTED

ORIGINAL

AO Form No. 82-Rev.
Form approved by
Comp. Gen., U. S.
June 28, 1950.

RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

OFFICE OF THE CLERK

NEW YORK CITY

RECEIVED FROM Ollman, S & M DATE 9/12/51

Docket No.	(Pl.)	(Def.)
17 Civ 4478	Ollman-N-4. Corp	FTC

ACCOUNT	AMOUNT		ACCOUNT		AMOUNT	
Clerks Fees	15		Registry Cash Bail	ACCT. NO. 1		
Bankruptcy Filing Fee			Tender			
Referee's Sal. and Exp. Fund			Seaman's Wages	ACCT. NO. 2		
			Unpaid Dividends In Bankruptcy	ACCT. NO. 3		
Miscel. Earnings Copy						
Certificate			Other Moneys			
Search			Costs			
			Fine			
Nat'zn Fees Pet. Nos.						
Ded. Nos.						
				Total ▶	15	

DEPUTY CLERK [signature]

Cash ☐ Check ☐ MONEY ORDER ☐

☆ U. S. GPO 16-603 888

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MORGAN GUARANTY TRUST COMPANY OF NEW YORK and J. P. MORGAN & CO. INCORPORATED, *Plaintiffs,* *against* FEDERAL TRADE COMMISSION, LEWIS A. ENGMAN, Chairman Federal Trade Commission; PAUL RAND DIXON, MAYO J. THOMPSON, M. ELIZABETH HANFORD and STEPHEN NYE, Members, Federal Trade Commission; and the UNITED STATES OF AMERICA, *Defendants.*	75 Civ. ____ (____)

Plaintiffs, Morgan Guaranty Trust Company of New York and J. P. Morgan & Co. Incorporated, by their attorneys Davis Polk & Wardwell, for their complaint herein allege as follows:

The Parties

1. Plaintiff Morgan Guaranty Trust Company of New York ("Morgan Guaranty" or the "Bank") is a bank and trust company established and organized under the laws of the State of New York, with its principal place of business in the Southern District of New York. Morgan Guaranty is a wholly owned subsidiary of J. P. Morgan & Co. Incorporated ("J. P. Morgan").

2. Plaintiff J. P. Morgan is a bank holding company incorporated under the laws of Delaware in 1968, with its principal place of business in the Southern District of

New York. J. P. Morgan is subject to regulation under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§ 1841 *et seq.* and owns all of the outstanding stock of Morgan Guaranty.

3. Defendant, Federal Trade Commission ("FTC"), is a commission created and established by the Federal Trade Commission Act, 15 U.S.C. §§ 41 *et seq.* ("the FTC Act").

4. Defendant, Lewis A. Engman, is the Chairman of the FTC, and defendants Paul Rand Dixon, Mayo J. Thompson, M. Elizabeth Hanford and Stephen Nye are Commissioners of the FTC. All such individual defendants are sued in their official capacities.

Jurisdiction and Venue

5. This action is brought under the Fourth and Fifth Amendments to the Constitution of the United States of America, and under the FTC Act, 15 U.S.C. §§ 41 *et seq.*, the Clayton Act, 15 U.S.C. §§ 12 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 *et seq.*, as hereinafter more fully appears.

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 2201, and 2202 and 5 U.S.C. §§ 701-706. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

7. Venue of this action is proper in this District by virtue of 28 U.S.C. §§ 1391(b) and (e).

8. Plaintiffs bring this action seeking:

(a) review of an administrative determination by the FTC of a motion by J. P. Morgan to limit or quash

a Subpoena Duces Tecum issued on June 10, 1975 to J. P. Morgan by the FTC (the "Subpoena");

(b) a declaratory judgment that the Subpoena is void on the grounds that the scope of its demands is beyond the investigatory authority and jurisdiction of the FTC; and

(c) a permanent injunction against any attempt by the FTC to enforce the Subpoena, and such other relief as may be appropriate.

Plaintiffs' Claim

9. By three resolutions dated April 16, 1974 (attached hereto as Exhibit "A") the FTC commenced a non-public investigation purportedly to obtain information on the structure, conduct and performance of the nuclear energy, coal and natural gas industries. Five months later, by resolution dated September 12, 1974 (attached hereto as Exhibit "B"), the FTC sought to expand the investigation to cover interlocking relationships between petroleum companies and financial institutions.

10. On June 10, 1975 the FTC issued the Subpoena to the Chairman of J. P. Morgan (who is also the Chairman of Morgan Guaranty). The Subpoena directed him to testify in connection with the FTC's aforesaid investigation and cited the FTC Resolutions dated April 16, 1974 and September 12, 1974 (the "Resolutions"). The Subpoena also directed him to produce the books, papers and documents specified in the "Schedule of Documents" attached to the Subpoena. (A copy of the Subpoena is attached hereto as Exhibit "C".)

11. By the terms of the FTC Act, the FTC has only limited jurisdiction over banking institutions. Its statu-

tory authority to investigate banks is limited to inquiries which are "necessary" to an investigation of third-parties *not* engaged in banking.

12. The Subpoena is beyond the FTC's limited jurisdiction and investigatory authority. Its broad and sweeping demands amount to an unlawful investigation by the FTC of a banking institution (*See* ¶ 15, *infra*).

13. The Subpoena seeks irrelevant material and is burdensome and oppressive.

Previous Unauthorized FTC Attempts to Investigate the Bank

14. The Subpoena is only the latest FTC attempt to use the energy study as justification to conduct a wide-ranging non-energy related investigation of the internal policies and operations of the Bank.

(a) In June, 1974 the Staff of the FTC requested an interview with the former chairman of Morgan Guaranty. It stated that it did not know precisely what it was looking for, but that it intended to make a broad inquiry to gain general knowledge about banking institutions. Among other things, the Staff wanted information regarding the structure of the Bank, its operating committees, and its method of choosing directors.

(b) In an effort to cooperate with the Staff, the Bank acceded to that request. However, the Bank expressly advised the Staff that it was cooperating without prejudice to, and without waiver of, the Bank's claim that the FTC's inquiry was beyond its jurisdiction and outside the scope of the Resolutions. In the interview of the former chairman of Morgan Guaranty on July 2, 1974 the Staff posed numerous inquiries regarding various aspects of the Bank's op-

erations, policies and procedures. Many of the inquiries were not limited to the FTC's purported energy investigation.

(c) In a spirit of cooperation, the Staff was voluntarily furnished with a copy of the Rules of the Bank and copies of published reports of Morgan Guaranty's Trust and Investment Division for the past three years.

(d) On September 23, 1974 the Staff informed the Bank that it planned to investigate the total operation of the Bank with respect to energy companies, including the Bank's directors, loan policies, trusts and investments, general expertise in the energy area and other business dealings. The Staff also wanted to examine the stockholdings of the Bank for its customers for a 10 to 15-year period. The Staff letter of inquiry which followed on September 25, 1974 is attached hereto as Exhibit "D".

(e) In October and November 1974 the Bank furnished the Staff with lists of directorships held by all of the Bank's directors going back to 1960, still expressly preserving its jurisdictional objection.

(f) On December 24, 1974 although the Bank had voluntarily furnished much information about its policies and procedures, the Staff sought still more comprehensive information and documents. By letter of December 24, 1974, a copy of which is attached as Exhibit "E", the Staff demanded a great deal of data completely unrelated to its purported energy investigation.

(g) On March 4 and 6, 1975 the Staff conducted interviews of the head of the Bank Petroleum Department, Credit Policy Committee, and the Secretary and Resident Counsel. The unrestricted nature of the questions posed by the Staff at these interviews made it quite clear that the Staff intended to investigate every aspect of the Bank's

operations and only then determine whether the results of that investigation could be made somehow to connect with the oncoming Commission investigation of companies in the energy field.

The Sweeping Demands of the Subpoena

15. Like the investigative attempts made before its issuance which the Bank consistently objected to on jurisdictional grounds, the Subpoena seeks a mass of information which has little or no relation to the energy investigation which the FTC relies on as a justification for its investigation of the Bank. On its face the Subpoena attempts to examine and investigate fully every procedure, policy, practice, transaction or relationship of the Bank which could in theory—although not in practice—be connected to a study of the energy industry. In effect, the Subpoena amounts to an investigation of the Bank.

(a) the Subpoena demands documents, going back ten years, that will show the organization of every "department, division, committee, working group and other component" in the Bank (¶ 3(a))*;

(b) the Subpoena demands, for ten years, the Bank's statements of its "goals, strategies, plans of action" (¶ 3(c));

(c) the Subpoena demands the name and title of every executive in the Bank and the name of the head of every single department, division, committee and working group in the Bank (¶ 3(b));

(d) the Subpoena demands to know how the Bank picks its Board of Directors (¶ 4);

(e) the Subpoena calls for information about how the Bank recruits its Board of Directors (¶ 5) and why and how it picked the directors it did elect, and why

---

* Citations are to the Subpoena.

and how it chose people considered for but not ultimately elected as Directors (¶ 6);

(f) the Subpoena demands every single document, again going back ten years, supplied by the Bank to each of its directors (whether or not connected with an energy company) which describes a director's duties or which describes the Bank itself (¶ 7);

(g) with respect to several corporations in the energy field, the Subpoena, in effect, demands every single business record of the Bank, again going back ten years (¶ 10);

(h) the Subpoena requires the Bank to produce copies of the agenda and the minutes of every meeting of the Board of Directors, the Executive Committee and the Examining Committee held in the last ten years (¶ 11);

(i) the Subpoena requires the Bank to produce, going back ten years with respect to 18 corporations in the energy field, documents reflecting the entire range of services that the Bank may have performed for each of these companies and their multitude of subsidiaries, as well as the massive amounts of paper needed to document every single credit transaction and the average and maximum time and demand deposits and balances maintained by each of the companies and their many subsidiaries;

(j) the Subpoena demands, with respect to "other commercial, trust and operating services performed . . . the dollar value charged for each such service and the dollar value to your bank attributed to each such service provided by your bank" (¶ 14);

(k) with respect to 18 listed energy companies and their many affiliates and subsidiaries, the Subpoena

requires the Bank, in effect, to produce practically every single paper prepared by any employee of the Bank in connection with the Bank's business with those companies (¶ 15).

The FTC Has Rejected Without Recourse J. P. Morgan's Efforts to Quash the Subpoena or Stay its Enforcement

16. J. P. Morgan, by motion dated July 2, 1975 filed with the FTC pursuant to its Procedure and Rules of Practice, challenged the Subpoena upon the grounds that:

(a) Morgan Guaranty is a bank subject to the comprehensive jurisdiction, regulation and investigatory powers of the Federal Reserve Board; and is not subject to the jurisdiction or regulation of the FTC;

(b) the documents demanded by the Subpoena are not subject to the investigatory authority of the FTC under §§ 6, 9 and 10 of the FTC Act, and the FTC's Procedures and Rules of Practice since the material sought is not limited to information necessary to the investigation of a corporation, group of corporations, or industry not engaged, or engaged only incidentally in, banking;

(c) the Subpoena represents an unauthorized and unlawful attempt by the FTC to investigate the Bank and is not justified by the limited qualification to the exclusion of banks from FTC jurisdiction contained in § 6(b) of the FTC Act; and

(d) the Subpoena seeks irrelevant material and is burdensome and oppressive.

17. On August 4, 1975 counsel for J. P. Morgan requested that the FTC respond to its July 2 motion papers, stating that the "motion raises important questions of first impression, in connection with the scope and extent of the

Commission's powers pursuant to the 1973 amendment of Section 6 of the Federal Trade Commission Act." A copy of this letter is attached as Exhibit "F". J. P. Morgan did not receive a written response to its motion papers from the FTC; however, on August 22, 1975 J. P. Morgan received a decision and order of the FTC with respect to the July 2 motion, in the form of a letter dated August 21, 1975 from the Acting Secretary of the FTC, a copy of which is attached as Exhibit "G" (the "Decision and Order").

18. Despite certain modifications to the Subpoena made by the Decision and Order, the scope of the Subpoena remains beyond the jurisdiction and investigatory authority of the FTC, is in excess of the FTC's delegated powers and is contrary to the FTC Act, the Clayton Act and the Bank Holding Company Act. The Subpoena, even as modified, continues to constitute an unauthorized and unlawful investigation by the FTC of the plaintiffs.

19. As to those matters referred to in the Subpoena that might be considered properly within the scope of the purported energy investigation, the FTC has refused to accede to the Bank's Freedom of Information Act Request dated June 30, 1975 as to whether the FTC first sought this information from the energy companies themselves, making its present inquiry of the Bank unnecessary within the meaning of § 6(b) of the FTC Act. A copy of J. P. Morgan's Freedom of Information Act Request is attached as Exhibit "H", and a copy of the FTC's response is attached as Exhibit "I".

20. Compliance with the Subpoena could expose plaintiffs to risk of severe sanctions. The purported "assurances" of the FTC contained in the Decision and Order (Exhibit "G", pp. 8-9) do not protect the confidentiality of the banker-customer relationship recognized and protected

by federal statutes and regulations. Plaintiffs' compliance with the Subpoena may require production of material which could result in violation of their obligation of confidentiality.

21. The Decision and Order present an immediate threat to plaintiffs because the FTC has expressly refused to stay the compliance obligations of the Subpoena. The FTC has indicated it will not entertain any arguments to stay compliance:

> "However, the Commission has determined that neither the purported reservation nor any additional memoranda you may hereafter file will operate to stay the compliance obligations of J. P. Morgan & Co. Inc. pursuant to the subpoena issued June 10, 1975. . . . The Commission having considered and denied the motion of J. P. Morgan & Co. Inc., except for the limitations hereinabove allowed, full compliance with the subpoena, as modified, is hereby ordered. Return shall be made on the subpoena at the hour and place specified in the subpoena on September 12, 1975." (Exhibit "G", pp. 8 and 10).

22. For the foregoing reasons, the Subpoena, as modified, presents a continuing threat of irreparable injury to plaintiffs. This action is necessary to protect plaintiffs' constitutional and statutory rights, and plaintiffs have no adequate and effective remedy at law.

WHEREFORE, plaintiffs Morgan Guaranty and J. P. Morgan respectfully pray that this Court:

> (i) enter judgment declaring that the decisions and determinations set forth in the FTC's Decision and Order dated August 21, 1975, and the Subpoena as modified thereby, are contrary to, and in violation of, the Constitution of the United States and applicable law;

(ii) enjoin the defendants from taking any action to enforce the Subpoena, as modified;

(iii) stay, pending final judgment, any action seeking to enforce the Subpoena, or any penalties against plaintiffs for refusal to comply with the Subpoena; and

(iv) grant such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
September 11, 1975

DAVIS POLK & WARDWELL

By _____
A Member of the Firm

1 Chase Manhattan Plaza
New York, New York 10005
Telephone: (212) 422-3400

Attorneys for Plaintiffs

Exhibit A

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

Resolution Directing Use of Compulsory Process in Non-Public Investigations

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the natural gas industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and a report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

Exhibit A

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

Resolution Directing Use of Compulsory Process in Non-Public Investigations

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the coal industry and on all relevant activities of each segment of that industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

Exhibit A

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

Resolution Directing Use of Compulsory Process in Non-Public Investigations

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the nuclear energy industry and on all relevant activities of each segment of that industry, including the production, sale and utilization of nuclear materials, the manufacture, sale, and utilization of nuclear power plant equipment, and other activities associated therewith, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

Exhibit B

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

Resolution Directing Use of Compulsory Process in Nonpublic Investigation

FILE No. 741 0019

NATURE AND SCOPE OF INVESTIGATION:

To determine the extent and effects of direct and indirect interlocking directorates, and other interlocking personnel and business relationships among domestic petroleum companies and between such companies and financial institutions and to determine whether or not such interlocking relationships may be in violation of Section 8 of the Clayton Act or may result in unfair methods of competition or unfair acts or practices within the meaning of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 C.F.R. 1.1, et seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: September 12, 1974

Form FTC 6-27 (Rev. Aug. 1970)

Exhibit C

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

Dtd June 11, 1975

E. C. Patterson, Chairman
J. P. Morgan & Co., Inc.
23 Wall Street
New York, New York 10015

MAILED
June 12, 1975
RECEIVED
JUN 13 1975
D. P. & W.
Referred To
Mr. M W Leisure

File No. 741 0019

Dear Sir:

There is served herewith, by registered mail, a subpoena for appearance at the instance of the Federal Trade Commission at an investigational hearing (or deposition) in connection with the above indicated matter pursuant to the Nonadjudicative Procedures of the Commission (Subpart A of Part 2 of the Commission's Organization, Procedures and Rules of Practice, copy of which is transmitted herewith).

Mr. Allee A. Ramadhan (202) 254-7466 is counsel representing the Commission, and if you have any inquiry concerning this matter, please contact him.

You will take notice that the delivery of this subpoena to you by registered mail is legal service and subjects you to the penalty imposed by law for failure to appear. You are advised that the Commission's Rules require that any motion to limit or quash a subpoena shall be filed within ten days after date of service of the subpoena, or, if the return date is less than ten days after service of the subpoena, within such other time as the Commission may allow. Twenty copies of such motion shall be filed with the Secretary of the Federal Trade Commission and a copy thereof shall at the same time be mailed to the Commission counsel named in the paragraph above.

Exhibit C

You will be entitled to the compensation regularly allowed Government witnesses for attendance. There is enclosed a blank voucher upon which to make your claim; such voucher, as well as the subpoena, must be brought with you.

Do not incur travel expense in obedience to the subpoena in excess of that required from the place to which the subpoena is addressed without first receiving authorization to do so, orally or in writing, from counsel representing the Commission. If you are temporarily located or permanently residing at a place which would require such excess travel expense in order to obey the subpoena, you are directed promptly to notify counsel representing the Commission; and if he fails or refuses to authorize such excess travel expense, you are directed to disregard the subpoena. You are also directed to disregard the subpoena if, for any reason, counsel representing the Commission authorizes you to do so.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Enclosures

Exhibit C

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

To E. C. Patterson, Chairman,
J. P. Morgan & Co., Inc.,
23 Wall Street,
New York, New York 10015

You are hereby required to appear before William Horne, an Attorney and Examiner of the Federal Trade Commission , at 2120 L Street, N.W., Room 402 in the City of Washington, D.C. on the 18th day of July, 1975, at 10:00 a.m., to testify in connection with the Commission's investigation captioned File No. 741 0019, pursuant to Commission Resolutions dated April 16, 1974 and September 12, 1974, copies of which are attached and made part hereof, for the purposes stated therein.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: See attached "Schedule of Documents"

Fail not at your peril.

In testimony whereof, the undersigned, an authorized official of the Federal Trade Commission, has hereunto set his hand and caused the seal of said Federal Trade Commission to be affixed at Washington, D.C. this 10th day of June, 1975.

KENNETH C. ANDERSON
Assistant Director, Bureau of Competition

Exhibit C

SCHEDULE OF DOCUMENTS

DEFINITIONS

As used herein:

(a) "Your bank" means the holding company, the bank, subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

(b) "Bank committee" means an organizational entity of your bank charged with any of the following responsibilities:

(i) asset and liability management,

(ii) sources and uses of funds evaluation,

(iii) promotion of quality and return on loan portfolios,

(iv) monitoring loan portfolio exposures,

(v) determination and/or coordination of loan pricing, credit and/or marketing policies, and

(vi) budget management and control.

(c) "Board committee" means an entity created, established or designated by the Board of Directors or provided for in the articles of incorporation or by-laws of your bank, whose membership is chosen in whole or in part from among the Board of Directors.

(d) "Credit policies" means courses of action, preferences, conditions, limitations, methods, procedures and practices pertaining to the acquisition, commitment and lending of funds.

(e) "Energy company" means any company that engaged in commercial activities in any of the following energy industries, either directly or through subsidiaries,

during the subpoena period or any part thereof: the exploration for, production, transmission by pipeline and/or sale of crude oil; the refining of crude oil; the transmission by pipeline and/or sale of gasoline or other motor fuels; the exploration for, production, transmission by pipeline, and/or sale of natural gas; the exploration for, mining, processing and/or sale of coal (except when engaged in by companies maintaining captive coal operations exclusively for internal use); the exploration for, development, mining, milling, conversion, enrichment, fabrication, processing, reprocessing and/or sale of nuclear energy resources; and/or the development, construction and sale of nuclear power plants and reactors.

(f) "Energy department" means any organizational unit of your bank specializing in whole or part in any of the energy industries.

(g) "Person" means any natural person, partnership, firm, corporation or association.

(h) "Documents" means all writings of every kind, including letters, telegrams, books, reports, files, records, memoranda, notes, minutes, calendar and diary entries, charts, tabulations, and transcriptions, tape, mechanical and electronic recordings and other memorializations of oral communications which are in the possession, custody or control of your bank. This term also includes reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody or control of your bank. The term documents further includes all punch cards or other cards, tapes or recordings used in data processing, together with the programming instructions and other written materials necessary to understand or use such punch cards, tapes or other recordings.

Exhibit C

Subpoena Period: Each paragraph in this Schedule of Documents covers the period from January 1, 1965, to the date of service of this subpoena unless otherwise specified.

DOCUMENTS TO BE PRODUCED

1. Articles of incorporation, articles of association, and by-laws of your bank.

2. Copies of the 10-K reports which your bank filed with the Securities and Exchange Commission during the subpoena period.

3. Such documents as will show*:

(a) the organization of your bank, including all departments, divisions, committees, working groups and other components;

(b) the names and titles of those persons holding executive positions in your bank, and the names of heads of departments, divisions, committees and headquarters working groups;

(c) statements of goals, strategies, plans of action for the growth, performance and development of your bank during the subpoena period to the extent that they apply to or affect the energy departments.

4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors.

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* In lieu of the documents demanded by paragraphs 3(a) and 3(b), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

Exhibit C

5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period.

6. With respect to each officer and director of an energy company who served on the Board of Directors of your bank or who was considered as a potential member of the Board of Directors during the subpoena period or any part thereof, whether elected to the board or not, provide such documents as will show:

(a) the name of the person,

(b) the company by which the person was employed or on the board of which he served,

(c) energy companies of which the person was a director,

(d) who recommended the person to be considered for membership on the board,

(e) conversations, discussions and other communications, whether written or oral among the officers and employees, committees or other organizational units of your bank regarding the evaluation of the person as a potential member of the Board of Directors of your bank,

(f) the reasons for the decision by your bank either to offer or decline to offer the person a membership on the Board of Directors of your bank,

(g) the date of the decision by your bank regarding whether to offer said person a membership on the Board of Directors,

(h) conversations, discussions or other communications between your bank and each potential director

and between your bank and the energy company with which the potential director was affiliated regarding his membership on the bank Board of Directors, and

(i) files of the chairman of the Board of Directors, president, executive vice president and senior vice presidents of your bank regarding the selection of persons to serve on its Board of Directors.

7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors during the subpoena period which:

(a) describe the duties and obligations of members of the Board of Directors, and

(b) describe the structure, policies or operations of your bank.

8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period:

(a) the policy of your bank concerning such service,

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

9. With respect to each officer and employee of your bank who served or was asked to serve as a director of an energy company during the subpoena period or any part thereof, provide such documents as will show:

(a) the name of the person,

(b) the name(s) of the energy company(ies) on whose board(s) of directors he served or was asked to serve,

(c) the date(s) he joined the board(s) of the energy company(ies) or declined such service,

(d) the request(s) by the officer or employee for permission of your bank to serve on the board(s) of directors of the energy company(ies),

(e) conversations, discussions and other communications whether written or oral, among the officers and employees of your bank, or committees or other organizational units of your bank regarding the evaluation of the officer's or employee's request for approval of his service on another board of directors,

(f) the reasons for the decision of your bank to approve or disapprove the request, and if your bank gave its approval, the communication of that decision internally to the staff of your bank, and

(g) conversations, discussions or other communications between your bank and the energy company regarding the membership of said officer or employee on its board of directors.

10. Copies of all documents which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

11. With regard to meetings of the Board of Directors, the Executive Committee of the Board and the Examining Committee of the Board of your bank supply for the subpoena period:

(a) copies of agenda, and

(b) copies of all documents memorializing deliberations of their meetings at which directors who were

simultaneously directors of energy companies were present.

12. With regard to all credit policies of your bank which were applicable to energy companies during the subpoena period or any part thereof, provide copies of energy department records and files (exclusive of customer files), copies of all communications among and between the Board of Directors, Board committees, Bank committees, energy departments, bank officers and bank directors and copies of any similar such documents relating or referring to:

(a) allocations and exposures by industry group, sub-group, purpose or type of loan;

(b) budget allotments and estimates of loan demand for any of the energy industries and any energy companies;

(c) portfolio growth and contraction, priorities among customers and recruitment of new customers; and,

(d) distinctions among firms by size, creditworthiness, relationship to your bank, geographic location and other business characteristics.

13. With regard to any energy department(s) of your bank such documents as will show for the subpoena period:

(a) the date of its formation;

(b) the reasons for its formation;

(c) a description of its purpose and functions;

(d) the names of bank officers and employees who served as members thereof, and their account assignments;

(e) recruitment and prospect lists of energy companies;

(f) annual budget commitments and estimates of loan demand for energy companies (whether or not their accounts are maintained in the energy departments);

(g) credit authorities of corporate lending officers;

(h) guidelines and criteria applicable to energy companies used in rating creditworthiness;

(i) copies of all reports, evaluations, transcripts and other documents submitted by management consultant firms or produced as the result of in house efforts dealing with the organization, reorganization, operations, policies and procedures of any of the energy departments; the organization, reorganization, operations, policies and procedures of your bank if they apply to or affect any of the energy departments or their interaction with other organizational units; and the role, participation and function of directors.

14. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply documents sufficient to identify for each year of the subpoena period:

(a) total credit commitments and arrangements extended;

(b) average and maximum credit actually used;

(c) general purpose, type and significant terms of each credit arrangement involving amounts in excess of $1,000,000*;

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* In lieu of the documents demanded by paragraph 14(c), a list, memorandum or other document containing the information, prepared and certified by a duly authorized officer of your bank, may be submitted.

(d) average and maximum time and demand deposits and balances maintained by the listed companies;

(e) other commercial, trust and operating services performed for the listed companies, the dollar value charged for each such service and the dollar value to your bank attributed to each such service provided by your bank.

15. For each of the energy companies listed in the Appendix attached hereto (including their affiliates, subsidiaries, predecessors and successors) supply:

(a) current desk files of lending officers;

(b) the following parts of credit files for the subpoena period:

(i) documents which are the work product of bank officers and employees relating or referring to meetings, negotiations, conversations and other business contacts with or about customers and any such documents consisting of impressions, comments, analyses and evaluations of customers or transactions with customers (both proposed and consummated),

(ii) correspondence and credit inquiries, and

(iii) commitment memoranda and executive (or other) committee approvals; and

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated business transactions during the subpoena period with any of the companies listed in the Appendix.

Exhibit C

APPENDIX

American Smelting & Refining Co.

Atlantic Richfield Co.

Cities Service Co.

Columbia Gas System

Continental Oil Co.

Colorado Interstate Co.

Eastern Gas & Fuel Associates

Exxon Corp.

Louisiana Land & Exploration Co.

Mobil Oil Co.

Nuclear Power Group

Natomas Co.

Panhandle Eastern Pipeline Co.

Phillips Petroleum Co.

Shaheen Natural Resources Co.

Standard Oil Co. of Ohio

Standard Oil Co. of California

Standard Oil Co. of Indiana

Exhibit C

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

Resolution Directing Use of Compulsory Process in Nonpublic Investigation

FILE No. 741 0019

NATURE AND SCOPE OF INVESTIGATION:

To determine the extent and effects of direct and indirect interlocking directorates, and other interlocking personnel and business relationships among domestic petroleum companies and between such companies and financial institutions and to determine whether or not such interlocking relationships may be in violation of Section 8 of the Clayton Act or may result in unfair methods of competition or unfair acts or practices within the meaning of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation: Sections 6, 9, and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice 16 C.F.R. 1.1, et seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: September 12, 1974

Form FTC 6-27 (Rev. Aug. 1970)

Exhibit C

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

Resolution Directing Use of Compulsory Process in Non-Public Investigations

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the natural gas industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and a report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

Exhibit C

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

Resolution Directing Use of Compulsory Process in Non-Public Investigations

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the coal industry and on all relevant activities of each segment of that industry, including reserve ownership, exploration, production, transportation, and marketing and distribution practices, and all related matters, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et. seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

Exhibit C

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford

Resolution Directing Use of Compulsory Process in Non-Public Investigation

FILE No. 741-0019

NATURE AND SCOPE OF INVESTIGATION:

To obtain information on all pertinent aspects of the structure, conduct and performance of the nuclear energy industry and on all relevant activities of each segment of that industry, including the production, sale and utilization of nuclear materials, the manufacture, sale, and utilization of nuclear power plant equipment, and other activities associated therewith, for the purpose of the development of a comprehensive study of the energy industry and report thereof to Congress pursuant to P.L. 93-135; it being understood that any such information received pursuant to compulsory process which pertains to possible violations of Section 5 of the Federal Trade Commission Act and/or Sections 7 and 8 of the Clayton Act may be utilized in conducting specific investigations thereof.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to conduct investigations: Sections 6, 9 and 10 of Federal Trade Commission Act, 15 U.S.C. 46, 49, 50; FTC Procedures and Rules of Practice, 16 CFR 1.1 et seq. and supplements thereto.

By direction of the Commission.

CHAS. A. TOBIN
Charles A. Tobin
Secretary

Dated: April 16, 1974

Exhibit D

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

September 25, 1974

Mr. Ellmore C. Patterson, Chairman,
Morgan Guaranty Trust Co. of New York,
23 Wall Street,
New York, New York. 10015

Re: Unnamed Energy Companies
File No. 741 0019

DEAR MR. PATTERSON:

Pursuant to Sections 6, 9 and 10 of the Federal Trade Commission Act and Commission resolutions dated April 16, 1974 and September 12, 1974, copies of which are attached hereto, the Bureau of Competition is presently engaged in an extensive study of competitive conditions in the energy industry. As part of that study, staff is focusing its attention on relationships between energy companies and banks to determine what, if any, anticompetitive effects may flow from these relationships. Our records indicate that Morgan Guaranty Trust Co. of New York has been interlocked through common directors with energy companies. Therefore, the Bureau has selected Morgan Guaranty Trust Co. of New York for a more complete investigation.

We are particularly interested, among other things, in the following areas of bank activity as they relate to energy companies:

1. Other directorships held by Morgan Guaranty Trust Co. of New York directors for the period January 1, 1960 through the present.

2. Director involvement in Bank Operations.

3. Bank Dealings with Energy Companies.

Exhibit D

4. Bank Expertise in the Energy Industries.
5. Loan Policies.
6. Trust Holdings.
7. Equipment Leasing.
8. Bidding on Oil or Gas Leases.

We intend to conduct investigational hearings regarding these matters during the early part of October. Accordingly, we will contact you to establish dates which would be convenient in proceeding in this matter.

Sincerely yours,

Allee A. Ramadhan,
Attorney,
Bureau of Competition.

Enclosures

CERTIFIED MAIL

cc: Mr. Borris Berkovitch,
Senior Vice President and
General Counsel,
Morgan Guaranty Trust Co. of
New York,
23 Wall Street,
New York, New York. 10015

Exhibit E

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

BUREAU OF COMPETITION

Mr. Michael W. Leisure, Esq.
Davis, Polk & Wardwell
1 Chase Manhattan Plaza
New York, N. Y. 10005

Re: Unnamed Energy Companies
File No. 741 0019

DEAR MR. LEISURE:

I acknowledge receipt of the information submitted with your letter of November 20, 1974. We wish to continue our investigation of the above-captioned matter by focusing our inquiry on the areas set forth in the following paragraphs.

Representatives of the Commission will be in New York in January and February. To expedite our examination and to conduct our inquiry with a minimum of disruption to the operations of the Bank, we want to describe in detail and in advance the type of information we are seeking.

In most instances we will be concentrating on records dating from January 1, 1969, but in some cases or where special factors warrant we may require information from earlier periods. Wherever written responses are requested, we would appreciate receiving the Bank's submissions by February 1, 1975.

If Morgan Guaranty prefers, we will issue subpoenae for any of the information requested.

I DOCUMENTARY DATA TO WHICH ACCESS IS SOUGHT

1. Minutes and agenda of meetings of the Board and committees of the Bank and Holding Company.

Exhibit E

2. Credit files of the following companies:

Atlantic Richfield Co.
Cities Service Co.
Continental Oil Co.
Exxon
Gulf Oil Co.
Mobil Oil Co.
Panhandle Eastern Pipe Line Co.
Phillips Petroleum Co.
Shell Oil Co.
Standard Oil Co. of California
Standard Oil Co. of Indiana
Texaco, Inc.

3. Files of the Petroleum and Energy Division (or equivalent unit) dealing with the budgeting of funds, requests for funds, reports and communications to the Board and committees, communications from the Board and committees, recruitment of customers, and policies and strategies for the extension of credit.

4. Files of the unit (or units) responsible for allocating funds to divisions of the Bank on a yearly, monthly, daily, etc., basis.

5. Files of the Credit Policy Committee, Money Allocation Committee or equivalent units responsible for reviewing credit policy and monitoring loan portfolio exposures.

6. Policy manuals for lending officers.

7. Dossiers prepared on the following for the use of senior bank officers for the purpose of determining whether to recommend the election of new members to the Board:

J. Paul Austin
Stephen D. Bechtel

Exhibit E

R. Manning Brown
Paul C. Cabot
Emilio G. Collado
Charles D. Dickey
W. Alton Jones
L. F. McCollum
M. J. Rathbone
Thomas Rodd
Robert T. Stevens
George S. Young

II Bank Personnel With Whom We Want to Speak

1. Chief Loan Officer

2. Chief Budgeting Officer (or equivalent)

3. Chief of Petroleum and Energy Division (or equivalent)

4. Secretary

5. Head of the Leasing Department

6. Head of the Trust Department

7. Loan Officers of selected accounts

III Questions to Which a Written Response Is Requested

1. Describe the stages of review and the approvals required (including any actions taken by the Board or notice given them) for a loan request beginning with the initial contact of the lending officer where the amount of the loan request (a) equals the Bank's legal or house limit, (b) is greater than $5,000,000 and (c) is greater than $1,000,000 but less than $5,000,000.

Exhibit E

2. What are the procedures by which funds are allocated to the divisions of the Bank on a yearly, monthly, daily, etc., basis?

3. What are the procedures by which loan portfolio exposures are monitored and controlled?

4. What decisions do the Credit Policy Committee, Money Allocation Committee (or equivalents) make and how do they operate within the Bank organizational structure?

5. Describe the standard covenants and restrictions incorporated in loan agreements for (a) high risk, (b) medium risk, and (c) low risk borrowers. Are there any special covenants associated with loans to petroleum, gas, coal or nuclear energy companies?

6. Describe the factors considered and the procedures used in making investments for discretionary trust accounts and in voting stock held in trust. This should include information concerning the identity of those with whom the final decisions rest and sources of information input.

7. Describe the procedures, review and approval required to permit an officer of Morgan Guaranty to serve as a director of another corporation.

8. What are the names and holdings of the thirty (30) largest stockholders of Morgan Guaranty, identifying parties for whom nominees hold stock.

9. See Attachment.

Thank you for your cooperation and assistance.

Sincerely yours,

ALLEE RAMADHAM
Allee Ramadham
Attorney
Bureau of Competition

Exhibit E

Questions, A, B, C & D apply to each of the corporations listed in the accompanying chart for the period January 1, 1969 to date. If the answer to questions A, B, C, or D is yes, mark the appropriate box in the chart with an "X." If the answer is no, leave the box blank.

The answer to Question E is to be calculated as of January 1, 1975. Record the number of shares in the appropriate box followed by percent of total outstanding shares in parenthesis. [e.g., 200,000 (3.1%)].

"The Bank" should be construed to include the bank, the holding company, and all subsidiaries of the bank and holding company.

QUESTION A*

Has The Bank

(a) loaned funds,

(b) participated in a syndicate which loaned funds,

(c) made available a line of credit (whether drawn upon or not),

(d) participated in a syndicate which made available a line of credit (whether drawn upon or not) equal to or greater than $5,000,000 to any of the companies listed or with respect to which The Bank could have recourse for repayment to any of the companies listed, or

(e) issued a letter of credit (revocable or irrevocable) at the request of any companies listed entitling a beneficiary to demand payment equal to or greater than $5,000,000.

---

* [For any case in which The Bank was the lead bank in a syndicate (parts b or d), mark the appropriate box in the chart with a double "XX"]

Exhibit E

QUESTION B

Has The Bank refused to loan funds, or make available a line of credit to any of the companies listed or for which any of the companies listed would have been a guarantor where the amount requested was equal to or greater than $1,000,000, or refused to issue a letter of credit (revocable or irrevocable) at the request of any companies listed which would have entitled a beneficiary to demand payment equal to or greater than $1,000,000.

QUESTION C

Has The Bank participated in the leasing of equipment whose acquisition cost was equal to or greater than $5,000,000 to any of the corporations listed.

QUESTION D

Has The Bank approached by mail, telephone, or employee representative any of the companies listed for the purpose of encouraging them to borrow funds or establish a line of credit with bank.

QUESTION E

How many shares of stock of the companies listed does The Bank have the power to vote. Aggregate sole and shared powers and stock held by the Bank, the Holding Company and subsidiaries of both whether held in trust or otherwise. What percent of the total shares outstanding does this figure represent.

Name	Question A	Question B	Question C	Question D	Question E
1. Ada Oil Corp.					
2. Adobe Corp.					
3. Agway, Inc.					
4. Alaska Interstate Co.					
5. Amerada Hess					
6. American Independent Oil Co.					
7. American Natural Gas Co.					
8. American Petrofina					
9. American Trading & Production Corp.					
10. Amerex, Inc.					
11. Apache Corp.					
12. Apco Oil Corp.					
13. Apexco, Inc.					
14. Argo Petroleum Corp.					
15. Arizona Fuels Inc.					
16. Ashland Oil (Kentucky)					
17. Atlantic Richfield					
18. Austral Oil Co.					
19. Autotronic Systems Inc.					
20. Aztec Oil & Gas					
21. Bayou State Oil Co.					
22. Beacon Oil Co.					
23. Belcher Oil Co.					

Name	Question A	Question B	Question C	Question D	Question E
24. Belco Petroleum Corp.					
25. Bonded Oil Co.					
26. Boswell Oil Company					
27. CRA, Inc.					
28. Cabot Corp.					
29. Calumet Industries Inc.					
30. Caribou Four Corners, Inc.					
31. Carolina Pipeline Co.					
32. CENEX (Farmer Union Central Exchange)					
33. Certified Oil Co.					
34. Champlin Petroleum					
35. Charter Co.					
36. Cheker Oil Co.					
37. Cities Service Co.					
38. Claiborne Gasoline Co.					
39. Clark Oil & Ref. Corp.					
40. Clinton Oil Co.					
41. Cloverleaf Service Stations Inc.					
42. Coastal States Gas Corp.					
43. Colonial Oil Co.					
44. Colonial Oil Industries					
45. Colorado Interstate Corp.					
46. Columbia Gas System					

Name	Question A	Question B	Question C	Question D	Question E
47. Consolidated Natural Gas					
48. Continental Oil Co.					
49. Crestmont Oil & Gas					
50. Crown Central Petroleum Co.					
51. Crystal Oil Co.					
52. Delta Drilling Co.					
53. Derby Refining Co.					
54. Diamond Shamrock Corp.					
55. Dixie Pipeline Co.					
56. Earth Resources Co.					
57. Eason Oil Co.					
58. Eastern Shore Natural Gas Co.					
59. Edgington Oil Refineries, Inc.					
60. El Paso Natural Gas					
61. Empire Gas Corp.					
62. Equitable Gas Co.					
63. Evangeline Refining Co., Inc.					
64. Exchange Oil & Gas Corp.					
65. Exxon					
66. FCX, Inc.					
67. FS Services, Inc.					
68. Famariss Oil & Refining Co.					
69. Farmland Industries					

Name	Question A	Question B	Question C	Question D	Question E
70. Fisca Oil Co.					
71. Forest Oil Corp.					
72. Gasland, Inc.					
73. Gastown Inc. of Delaware					
74. Gasoline Marketers, Inc.					
75. General American Oil Co. of Texas					
76. General Crude Oil Co.					
77. Getty Oil					
78. Gladieux Refinery, Inc.					
79. Golden Eagle Refining Co.					
80. Great Planes Natural Gas					
81. Gulf Oil Co.					
82. Hamilton Bros. Petroleum Corp.					
83. Herbst Oil Co. (Terrible Herbst)					
84. Hi-Fy Gasoline Stations, Inc.					
85. Highway Oil, Inc.					
86. Houston Natural Gas					
87. Hudson Oil Co.					
88. Hunt Oil Co.					
89. Husky Oil Co.					
90. Industrial Development Associates					
91. Inexco Oil Co.					
92. J. W. Refining, Inc.					

Name	Question A	Question B	Question C	Question D	Question E
93. Kaneb Services, Inc.					
94. Kerr-McGee Corp.					
95. Kewanee Oil Co.					
96. Koch Industries, Inc.					
97. Kocolene Oil Corp.					
98. Liberty Petroleum Co., Inc.					
99. Lion Oil Co.					
100. Lone Star Gas Co.					
101. Louisiana Land & Exploration Co.					
102. Lunday-Thagard Oil Co.					
103. M. F. A. Oil Co.					
104. MacMillan Ring-Free Oil Co.					
105. Mapco, Inc.					
106. Marathon Oil Co.					
107. Marine Petroleum Co.					
108. Mars Oil Co.					
109. Martin Oil Company, Inc.					
110. Martin Oil Service, Inc.					
111. McCullock Oil Corp.					
112. Mesa Petroleum Co.					
113. Midland Cooperatives Inc.					
114. Midwest Oil Co.					
115. Mobil Oil Corp.					

Name	Question A	Question B	Question C	Question D	Question E
116. Mohawk Petroleum Corp.					
117. Murphy Oil Co.					
118. Naph-Sol Refining Co.					
119. National Oil Inc.					
120. Natomas Corp.					
121. North Star Oil					
122. Northern Natural Gas Co.					
123. Occidental Petroleum Corp.					
124. Oil Transit, Inc.					
125. Osceola Refining Co.					
126. Panhandle Eastern Pipe Line Co.					
127. Pargas, Inc.					
128. Pasco, Inc.					
129. Pauley Petroleum, Inc.					
130. Payless Stations					
131. Pennzoil					
132. Peoples Natural Gas Co.					
133. Petroleum Corp. of Texas (PETCO)					
134. Petroleum, Inc.					
135. Petroleum Marketing Corp.					
136. Phillips Petroleum Corp.					
137. Pioneer Natural Gas Co.					
138. Placid Oil Co.					

Name	Question A	Question B	Question C	Question D	Question E
139. Power Test Corp.					
140. Powerine Oil Co.					
141. Pride Refining, Inc.					
142. Quaker State Oil Refining Corp.					
143. Quintana Petroleum Corp.					
144. Reserve Oil & Gas					
145. Rock Island Refining Co.					
146. Romaco Petroleum Corp.					
147. Sabine Royalty Corp.					
148. San Joaquin Oil Co.					
149. Shaheen Natural Resources Co. Inc.					
150. Shell Oil Cc.					
151. Shenandoah Oil Corp.					
152. Signal Companies					
153. Site Oil Company					
154. Skelly Oil Co.					
155. South Central Oil Co.					
156. Southern Natural Resources, Inc.					
157. Southland Oil Co. (Ga.)					
158. Southland Royalty Co.					
159. Southwest Gas Corp.					
160. Southwestern Oil & Refining Co.					
161. Standard Oil Co. of California					

Name	Question A	Question B	Question C	Question D	Question E
162. Standard Oil Co. of Indiana					
163. Standard Oil Co. of Ohio					
164. Star Service & Petroleum Co.					
165. Street (J.D.) & Co., Inc.					
166. Suburban Propane Gas Corp.					
167. Sun Oil Co.					
168. Suniand Refining Co.					
169. Superior Oil Co., (The)					
170. Super Test Oil & Gas Co.					
171. Tenneco, Inc.					
172. Tesoro Petroleum Corp.					
173. Texaco, Inc.					
174. Texas American Oil Corp.					
175. Texas Eastern Transmission Corp.					
176. Texas Gas Transmission Co.					
177. Texas International Co.					
178. Texas Oil & Gas Corp.					
179. Texas Pacific Oil Co.					
180. Three Rivers Refinery					
181. Thrifty Oil Co.					
182. Thunderbird Petroleum Co.					
183. Time Oil Co.					
184. Tonkawa Refining Co.					

Name	Question A	Question B	Question C	Question D	Question E
185. Toscopetro Corp.					
186. Total Leonard, Inc.					
187. Total North America					
188. Transco Companies, Inc.					
189. Transit Oil Co. Inc.					
190. Tresler Oil Co.					
191. U Save Automatic Corp.					
192. Union Oil of California					
193. Union Pacific Company					
194. Union Petroleum Corp.					
195. Union Texas Petroleum					
196. United Refining Co.					
197. United States Oil & Refining Corp.					
198. Warren Equities Inc.					
199. Whitaker Oil Company					
200. Witco Chemical Corp.					

Exhibit F

[LETTERHEAD OF DAVIS POLK & WARDWELL]

August 4, 1975

Non-Public Investigation
Investigation File No. 741 0019
Federal Trade Commission
Washington, D. C. 20580

Gentlemen:

On behalf of our client J. P. Morgan & Co., Inc., we have filed a motion July 2 to quash or limit the subpoena duces tecum issued June 10, 1975 by the Commission, at the request of certain of the staff attorneys.

Our motion raises important questions of first impression, in connection with the scope and extent of the Commission's powers pursuant to the 1973 Amendment of Section 6 of the Federal Trade Commission Act.

We understand that under normal procedure we would not be given the opportunity of receiving a copy of the staff's response to our moving papers. However, in view of the fact that our motion presents matters of first impression, we thought it might be helpful to the Commission if we had an opportunity to respond to whatever response the staff makes to our motion papers.

If it is necessary for me to file a formal motion to this effect, I shall of course be glad to do so. If that is not necessary, will you kindly regard this letter as a specific request to that end.

Respectfully,

TAGGART WHIPPLE

cc: Paul Daw, Esq.
Office of Commissioner Nye

Exhibit G

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

August 21, 1975

Taggart Whipple, Esq.
Messrs. Davis, Polk & Wardwell
One Chase Manhattan Plaza
New York, New York 10005

Re: Subpoena Duces Tecum Issued on June 10, 1975 to J. P. Morgan & Co. Inc.
File No. 741 0019
Unnamed Energy Companies

DEAR MR. WHIPPLE:

This is in response to the motion of J. P. Morgan & Co. Inc. to quash or limit the above-described subpoena.

The Commission has decided to limit the subpoena in the following respects:

1. Under the section designated *"Definitions,"* Part (a) is modified to read:

> (a) "Your bank" means J. P. Morgan & Co. Inc., Morgan Guaranty Trust Co., venture capital and equipment leasing subsidiaries, successors and predecessors of each and any person acting or purporting to act in their behalf.

2. Part (h) is modified by adding after the last sentence of the definition of "Documents" the following sentence:

> Documents refers only to those located in the United States.

Exhibit G

3. Under the section designated "DOCUMENTS TO BE PRODUCED," Part (4) is modified to read:

4. Documents relating to the policies, procedures and criteria used by your bank during the subpoena period in the selection of persons to serve on its Board of Directors, if applicable to the selection of persons who were directors or officers of energy companies.

4. Part (5) is modified to read:

5. Documents reflecting instructions, guidelines or criteria given by your bank to outside recruiting firms or other persons engaged in performing similar functions regarding the recruitment of board members on behalf of your bank during the subpoena period, if used in the consideration of a person who was a director or officer of an energy company.

5. Part (7) is modified to read:

7. All manuals, guidelines, policy directives and similar documents supplied by your bank to the directors who were simultaneously directors or officers of energy companies which:

(a) describe the duties and obligations of members of the Board of Directors, and

(b) describe the structure, policies or operations of your bank.

6. Part (8) is modified to read:

8. With regard to service by officers and employees of your bank on the board of directors of other corporations, such documents as will show for the subpoena period if applicable to service on the board of an energy company:

(a) the policy of your bank concerning such service,

Exhibit G

(b) the procedures which an officer or employee of your bank must follow in securing the approval of your bank for his membership on said board of directors, and

(c) the criteria and guidelines which govern the consideration by your bank of such requests by officers and employees.

7. Part (10) is modified to read:

10. Copies of all documents, in the nature of summaries, reviews and digests, which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof.

8. Part (15)(c) is modified to read:

(c) documents consisting of communications to and from the Board of Directors, Board committees, Bank committees, bank officers and bank directors dealing with potential and consummated credit transactions during the subpoena period with any of the companies listed in the Appendix involving amounts in excess of $1,000,000.

In all other respects, the Commission has denied the motion, having made the following determinations with respect to the issues you have raised:

1. The investigational resolutions of April 16 and September 12, 1974 provide an adequate description of the scope and purposes of the Commission's investigation. *FTC* v. *Green,* 252 F. Supp. 153, 155-56 (S.D.N.Y. 1966).

You correctly observe that interlocking directorates between a bank and energy companies could not constitute a

violation of Section 8 of the Clayton Act, 15 U.S.C. § 19, and the reference to Section 8 in the September 12 resolution concerns only the possibility of interlocking directorates between competing petroleum companies. Nevertheless, the investigation is intended alternately to examine whether certain interlocking relationships involving petroleum companies result in violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Furthermore, the overriding purpose of the investigation is to enable the Commission to prepare for Congress a comprehensive study of the energy industry, pursuant to Pub. L. 93-135.

2. The Trans-Alaska Pipeline Authorization Act, Pub. L. 93-153, 87 Stat. 576 (1973) amended Section 6 of the Federal Trade Commission Act (15 U.S.C. § 46) to provide that the Commission may investigate banks "to the extent that such action is necessary to the investigation of any . . . industry which is not engaged . . . in banking." The amendment grants the Commission investigatory jurisdiction over banks with regard to all subjects "necessary" to the resolution of issues in an investigation of an industry not engaged in banking. The effect of the amendment is to define the permissible scope of an investigation touching on banks and to require that the subject matter of such an inquiry arise out of a matter properly under investigation—in this instance, competitive conditions in the energy industry.

As part of the Commission's Energy Study, its staff is examining the effects of interlocking directorates between energy companies and banks on competitive conditions in the energy industry. Since the availability of credit is highly important to the capital-intensive energy sector, the Commission's staff is investigating the possibility that interlocked energy companies or some segment of the industry with which they are identified receive preference in obtain-

ing credit; the possibility that interlocked energy companies use their position to deny or limit credit available to their competitors or to a segment of the industry to which they are antagonistic; the possibility that interlocked energy companies have access to confidential credit file data of competitors; and the possibility that interlocked energy companies influence bank credit policies to encourage or inhibit various alternative energy sources and industry structures.

Necessary to the resolution of the investigatory issues just described is information concerning your client's allocation of credit among energy companies represented on its board and those not represented, credit policies which dictate such allocation, reasons for choosing directors affiliated with energy companies, and reliance on those directors' advice and participation. Therefore, the Commission may properly compel production of the subpoenaed information in order to complete its inquiry into competitive conditions in the energy industry.

3. The nature and purpose of the investigation of an industry subject to the Commission's jurisdiction determines the permissible scope of the related investigation of a bank. Once this scope is established and the pertinent subject matter delineated, the Commission may demand the production of any documents reasonably relevant to that subject matter. *Adams* v. *FTC*, 296 F.2d 861, 866 (8th Cir. 1961), *cert. denied* 369 U.S. 864 (1962); *FTC* v. *Green*, 252 F. Supp. 153, 156 (S.D.N.Y. 1966); see also, *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950). Therefore, the standard of relevance which applies to subpoenas issued to banks does not differ from the standard applicable to non-banking corporations subject to the Commission's jurisdiction.

In this context, the Commission's investigative authority, as described by the Supreme Court in *United States* v. *Morton Salt Co., supra*, is extensive:

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has the power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend upon a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." 338 U.S. at 642-43.

The Court continued:

> "Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." 338 U.S. at 652.

4. The phrase "to the extent . . . necessary" in the 1973 amendment to Section 6 of the Federal Trade Commission Act has the effect of delimiting the permissible scope of an investigation touching on banks. It does not require that information subpoenaed from a bank be demonstrably unavailable from any other source, nor that the Commission have exhausted every other possible avenue of inquiry before compelling a bank to produce documents.

In any event, relatively few documents to which the subpoena specifications apply are available from energy companies. Information similar to that required by specifications 14(a)-(d), and, in part, 14(e) may be in the possession of energy companies, but such information, in itself, would not reveal the form and context in which your client maintains it. Knowledge of how the information is kept may provide investigative leads and assist the Commission's staff in drawing inferences about several investigative issues.

5. The documents sought by the subpoena, as limited above, are both relevant and necessary to the exploration of matters within the permissible scope of the Commission's investigation into competitive conditions in the energy industry.

All of the subpoenaed documents are relevant in one or more of the following respects:

First, relevant and necessary to the investigation are documents concerning the formation and purposes of the interlocking arrangements and the participation and influence of interlocked directors. Specifications 4, 5, 6, 7, 8, 9 and 11 are among those demanding this type of information.

Second, relevant and necessary to the investigation are documents concerning a bank's credit policies applicable to energy companies. These may reveal distinctions made between interlocked and non-interlocked companies. Specifications 3(c), 11, 12, and 13(e), (f) and (i) are among those demanding this type of information.

Third, relevant and necessary to the investigation are documents concerning a bank's dealings with energy companies. These may be used to identify and compare factors

which determine which companies receive credit, on what terms and in which amounts. Specifications 3(c), 10, 14 and 15 are among those demanding this type of information.

In addition to these three substantive areas, certain information concerning a bank's organization and operating procedures is relevant and necessary to the investigation. Knowledge of these procedures is necessary to determining how directors' influence may be brought to bear within the bank. Specifications 1, 2, 3 and 13(a)-(d), (g)-(i) are among those demanding this type of information.

6. The Commission has examined the specifications of the subpoena and finds that, as limited above, the subpoena is neither overly broad nor unduly burdensome. Many of the specifications are expressly limited to documents relevant to interlocked directors or interlocked energy companies. These are circumscribed classes. Other items seek information regarding specific policies which apply to energy companies or with respect to a limited list of energy companies.

While the subpoena demands the production of a substantial number of documents, this results from the extent and size of the bank's operations rather than from any undue demands of the subpoena. Inconvenience is relative and must be considered in relation to the size of the subpoenaed party. *Application of Radio Corp. of America*, 13 F. R. D. 167, 172 (S.D.N.Y. 1952). Moreover, breadth alone is not sufficient justification for refusing enforcement of a subpoena. *Adams* v. *FTC*, *supra* at 867. The test to be applied to claims of burdensomeness is not whether a burden has been imposed, but rather whether the subpoena is so unduly burdensome that compliance with it would clog the conduct of business. *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1945); *Genuine Parts Co.* v. *FTC*,

313 F. Supp. 855, 859 (N.D. Ga. 1969), *aff'd.* 445 F.2d 1382 (5th Cir. 1971). The subpoenaed party bears the burden of proving undue burdensomeness. *FTC* v. *Standard American, Inc.*, 306 F.2d 231, 235 (3rd. Cir. 1962). Nothing in the motion to quash persuades the Commission that production of the subpoenaed material would unduly disrupt your client's business. Furthermore, the Commission's own examination of the subpoena, as limited, discloses no undue burden.

7. In order to minimize the burden of production pursuant to the subpoena, the officer of the Commission who issued it is authorized to establish arrangements for Commission personnel to review and, as necessary, reproduce the subpoenaed documents on your client's premises. See § 2.7(a) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.7(a).

8. Your request that you be provided a copy of the Commission staff's response to your motion and be accorded an opportunity to reply thereto, as requested in your letter of August 4, 1975 to the Commission, is hereby denied. The Commission is not required, as a matter of procedural due process, to make available staff memoranda regarding motions to quash, inasmuch as pre-complaint investigational proceedings do not give rise to the procedural safeguards applicable to adjudicative proceedings. *Genuine Parts Co.* v. *FTC*, 445 F.2d 1382 (5th Cir. 1971); *FTC* v. *Hallmark*, 265 F.2d 433 (7th Cir. 1959). Such memoranda are likewise exempt from disclosure under the Freedom of Information Act and the Commission's Rules of Practice and Procedure. 5 U.S.C. § 552(b)(5), (7); 16 C.F.R. § 4.10(a), (3), (5). Finally, having decided that additional argumentation will not be necessary to aid it in resolving this matter, the Commission declines to exercise its discretion to grant your request.

Exhibit G

9. The Commission is aware that your letter of July 2, 1975 to the Secretary of the Commission, transmitting your motion to quash, contains a purported reservation of the right to file a supplemental memorandum in support of your motion after resolution of your Freedom of Information access request June 30, 1975. However, the Commission has determined that neither the purported reservation nor any additional memoranda you may hereinafter file will operate to stay the compliance obligations of J. P. Morgan & Co. Inc. pursuant to the subpoena issued June 10, 1975.

Although you have not raised the attorney-client privilege as an objection to the subpoena, the Commission recognizes the possibility that the specifications may encompass certain privileged communications between attorney and client. Therefore, the Commission has determined that such communications need not be produced. However, in lieu of producing documents claimed to constitute privileged attorney-client communications, your client must submit a schedule identifying each document withheld under claim of such privilege and setting forth, for each such document, the reasons for the application of the privilege.

The Commission further recognizes that many of the subpoenaed documents may be regarded as sensitive business information. Therefore, the Commission has decided to grant your client the following assurances with respect to the contents of all documents responsive to subpoena specifications 3 through 15, inclusive:

1. Pursuant to the Commission's tentative determination of confidentiality, the Secretary of the Commission will deny any request made under the Freedom of Information Act for access to any of the protected documents or to any copies, tabulations, digests, or summaries thereof prepared by the Commission, its staff or consultants.

2. In the event an appeal is taken from the Secretary's denial of such an access request, your client will be promptly

notified of the pendency of such appeal and afforded seven days within which to file a written response with the Commission.

3. Thereafter, if the Commission determines that any or all of the documents to which access is sought are not exempt from mandatory disclosure pursuant to the Freedom of Information Act, or that they are exempt but the Commission will exercise its discretion to release them, the Commission will immediately advise your client of its decision and further advise it that the documents will be delivered to the requesting party within five days.

4. The Commission will not release upon its own motion any of the protected documents or their contents to any person outside the employ of the Commission, without first giving your client ten days' notice of its intention to do so.

The foregoing assurances will not apply to the Commission's furnishing information in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process. In the event of such release, the Congressional committee or subcommittee or the court will be advised that your client considers the material to be confidential, and your client will, if possible, be afforded prior notice.

The Commission further exempts from the foregoing assurances its furnishing the documents to an outside consultant retained by the Commission. However, only a consultant who has agreed not to release the documents may be given access to them.

The foregoing assurances shall be effective for a period of three years from the date of this letter, at the end of which time the commitment may be extended upon a showing of justification.

The foregoing assurances do not apply to any information which (1) is now in the public domain; (2) enters the public domain from a source other than the Commission or its employees; (3) was in the Commission's possession

prior to disclosure to the Commission pursuant to this subpoena; or (4) is supplied to the Commission or its employees by a third party lawfully in possession thereof. Nothing in the foregoing sentence, however, will constitute a waiver by your client of any restrictions imposed by law on the Commission's use of any such information, however obtained.

The foregoing assurances are given with the understanding that in the event of issuance of an adjudicative complaint in this matter, the confidential status of the specified information and the limitations on its disclosure shall be governed solely by the applicable provisions of the Commission's Rules of Practice, Part 3—Rules of Practice for Adjudicative Proceedings.

The Commission having considered and denied the motion of J. P. Morgan & Co. Inc., except for the limitations hereinabove allowed, full compliance with the subpoena, as modified, is hereby ordered. Return shall be made on the subpoena at the hour and place specified in the subpoena on September 12, 1975.

By direction of the Commission.

VIRGINIA M. HARDING, *Acting Secretary*

REGISTERED MAIL
RETURN RECEIPT REQUESTED

cc: E. C. Patterson, Chairman
J. P. Morgan & Co. Inc.
23 Wall Street
New York, New York 10015

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Exhibit H

[LETTERHEAD OF DAVIS POLK & WARDWELL]

June 30, 1975

Freedom of Information Act Request
Office of the Secretary
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Sir:

We are counsel for J. P. Morgan & Co., Inc. ("Morgan") which was served by the Commission with a subpoena *duces tecum* dated June 10, 1975 pursuant to its investigation captioned File No. 741 0019 and pursuant to its Resolutions dated April 16, 1974 and September 12, 1974. We believe that under the 1973 amendment to Section 6 of the Federal Trade Commission Act contained in the Trans-Alaska Pipeline Authorization Act, Pub. L 93-153, 27 Stat. 576, there are serious jurisdictional questions as to the Commission's authority to issue such a subpoena to our client pursuant to that amendment, and therefore we request production for copying and inspection of the following materials pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and Part 4 of Title 16, Code of Federal Regulations, and we agree to pay, in accordance with § 4.8(c) of these rules, whatever proper fees may be charged for processing this request.

(a) All documents prepared or received by or on behalf of the Commission or by any of its agents or employees referring or relating to the Commission's or any of its agent's or employee's understanding of the scope, purpose and effect of any part of what is now

the 1973 amendment to Section 6 of the Federal Trade Commission Act contained in the Trans-Alaska Pipeline Authorization Act, Pub. L. 93-153, 27 Stat. 576;

(b) All documents prepared or received by or on behalf of the Commission or by any of its agents or employees constituting correspondence with or from any United States Senator or Representative, legislative or administrative assistant, or other Congressional staff member referring or relating in any way to what is now the statutory amendment specified in (a) above;

(c) All documents prepared or received by or on behalf of the Commission or by any of its agents or employees referring or relating to any meeting, negotiation, communication or conversation with any United States Senator or Representative, legislative or administrative assistant, or other Congressional staff member, referring or relating in any way to what is now the statutory amendment specified in (a) above; and

(d) All documents which in any way reflect any attempt made by the Commission or by any of its agents or employees to obtain from any domestic energy company (as that term is defined in the Commission's subpoena to Morgan dated June 10, 1975) the materials or their equivalents requested from Morgan in the Commission's subpoena dated June 10, 1975.

For the purposes of this request, the word "documents" means all writings of every kind, including letters, telegrams, books, studies, reports, files, records, memoranda, notes, minutes, calendar and diary entries, tape, mechanical and electronic recordings and other memorializations of oral communications which are in the possession, custody

or control of the Commission, its agents or employees, and all drafts and preliminary drafts thereof. The term also includes reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody or control of the Commission.

Thank you for your cooperation.

Very truly yours,

MICHAEL W. LEISURE
Michael W. Leisure

cc: Allee A. Ramadhan, Esq.

Exhibit I

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

July 9, 1975

Mr. Michael W. Leisure
Davis, Polk & Wardwell
One Chase Manhattan Plaza
New York, New York 10005

Re: J. P. Morgan & Co., Inc. and
The Trans-Alaska Pipeline Authorization Act

Dear Mr. Leisure:

This is in response to your June 30, 1975 request for access under the Freedom of Information Act (5 U.S.C. § 552 et seq.) to information regarding the above-mentioned subject matter.

Your request is denied because the description required by 4.11(a)(1)(ii)(A) of the Commission's Rules of Practice is insufficient to allow identification and location of the records.

You may appeal this denial to the Commission within thirty (30) days. The appeal shall be in writing and should include a copy of this letter. Your appeal should be addressed as follows:

Freedom of Information Act Appeal
Office of the General Counsel
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Washington, D. C. 20580.

Exhibit I

If an appeal is submitted, provision of the beginning date of the period for which records are desired should be made. Presently, the enactment date of the Trans Alaska Pipeline Authorization Act is thought to be this date. Also, as much specificity as possible should be provided in order that the Commission can act on your request with reasonable expectation that it can be honored without undue burden.

C. G. Thuot, Sr., Acting Secretary, is deemed to be the responsible official for the denial contained herein.

Sincerely,

C. G. Thuot, Sr.
C. G. Thuot, Sr.
Acting Secretary

Notice of Motion to Dismiss

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FIRST NATIONAL CITY BANK, et al., *Plaintiffs,* *v.* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4365 (MEF)
THE CHASE MANHATTAN BANK, et al., *Plaintiffs,* *v.* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4417 (MEF)
MELLON NATIONAL CORPORATION, *Plaintiff,* *v.* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4449 (MEF)
CHEMICAL NEW YORK CORPORATION, et al., *Plaintiffs,* *v.* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4487 (MEF)

Notice of Motion to Dismiss

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, et al., *Plaintiffs,* *v.* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4486 (MEF)

PLEASE TAKE NOTICE that upon the attached affidavit of William A. Horne and the annexed memorandum of law, the Federal Trade Commission and each of its four Commissioners, by their undersigned attorneys, will move this Court, at the United States Court House, Foley Square, New York, N. Y., on the 27th day of October, 1975, at 2:15 p.m., or as soon thereafter as counsel may be heard, for leave, pursuant to Rule 12(b) F.R.C.P. to dismiss the above-captioned actions on the grounds that this Court lacks jurisdiction over the subject matter of these actions and that plaintiffs have failed to state a claim upon which relief can be granted, and for such other and further relief as the Court deems just and proper.

Dated: New York, N. Y.

ROBERT J. LEWIS
Robert J. Lewis
General Counsel

GERALD P. NORTON
Gerald P. Norton
Deputy General Counsel

GERALD HARWOOD
Gerald Harwood
Assistant General Counsel

WARREN S. GRIMES
Warren S. Grimes
Attorney

Federal Trade Commission
Washington, D. C. 20580

Affidavit of William A. Horne

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

DISTRICT OF COLUMBIA
CITY OF WASHINGTON } ss.

WILLIAM A. HORNE, being duly sworn, deposes and says as follows:

1. I am a staff attorney of the Federal Trade Commission working in the Bureau of Competition.

2. Since June 10, 1974, the date on which my employment by the Federal Trade Commission began, I have worked on the investigation and study of the effects of interlocking directorates between banks and energy companies on competitive conditions in the energy industry.

This investigation and study is being conducted as part of the Federal Trade Commission's Energy Study, File No. 741 0019, with the primary goal of writing a report to Congress.

3. As part of this investigation and study, substantially identical subpoenas *duces tecum* were issued on June 10, 1975 to BankAmerica Corporation, Chase Manhattan Corporation, Chemical New York Corporation, Citicorp, Continental Illinois Corporation, First City Bankcorporation of Texas, J. P. Morgan & Co., Inc., Mellon National Corporation, and Security Pacific Corporation.

Affidavit of William A. Horne

4. By letter dated September 9, 1975, counsel for Roger E. Anderson, Chairman of Continental Illinois Corporation, indicated that Mr. Anderson, to whom the subpoena *duces tecum* of June 10, 1975 was addressed in his capacity as Chairman, would not comply with the subpoena.

5. Commission staff is currently negotiating with representatives of BankAmerica Corp., First City Bankcorporation of Texas, and Security Pacific Corp. concerning compliance with subpoenas *duces tecum* directed to them on June 10, 1975.

WILLIAM A. HORNE
William A. Horne

Subscribed and sworn to before this 2d day of October, 1975.

JUANITA A. WELLS
Notary Public

My Commission Expires March 15, 1977

Affidavit of Edward J. Reilly, In Opposition

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) and THE CHASE MANHATTAN CORPORATION, *Plaintiffs,* *against* FEDERAL TRADE COMMISSION; LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members, Federal Trade Commission, *Defendants.*	75 Civ. 4417 (MEF) Affidavit in Opposition to Defendants' Motion to Dismiss For referral to Judge Frankel after docketing

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

EDWARD J. REILLY, being duly sworn, says:

1. I am a member of the firm of Milbank, Tweed, Hadley & McCloy, attorneys for The Chase Manhattan Bank (National Association) and The Chase Manhattan Corporation (collectively, "Chase"). I make this affidavit in opposition to the defendants' motion to dismiss pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

2. For the past thirteen months our firm has acted as counsel to Chase in connection with various requests for information made by the Commission's staff relating to the Commission's investigation of the energy industry. Chase has complied with the bulk of those requests and, without

prejudice to the right to raise appropriate jurisdictional objections, with a subpoena duces tecum issued by the Commission seeking documents relevant to the identities, affiliations and functions of its outside directors. (Carlson Aff., Complaint, Ex. 2)

3. On June 13, 1975, however, Chase received another subpoena duces tecum, dated June 10, 1975 and issued by the Commission in connection with its investigation of the energy industry (Complaint, Ex. 1), which called for the production of literally millions of documents. After a careful review of this subpoena to estimate the burden of compliance with it, Chase moved before the Commission on July 7, 1975 to limit or quash it on two separate grounds: (1) because its issuance exceeded the defendants' statutory authority, and (2) because compliance with it would constitute an unreasonable and oppressive burden.

4. Chase's motion was supported by the affidavits of six bank officers, each of whom recited the burden which compliance would impose upon his area of bank operations, and each of whom concluded that because of the enormous number of documents encompassed by the subpoena, compliance would substantially interfere with, disrupt or render impossible the continuance of normal banking operation. (Complaint, Ex. 2)

5. Notwithstanding the facts set forth in those affidavits, the Commission by written decision dated August 21, 1975, denied Chase's motion to quash the subpoena, modified it in certain minor respects, and ordered "full compliance" by production of the documents in Washington, D.C. on September 12, 1975. Accordingly, the present action was commenced on September 9, 1975. Its jurisdictional bases are three-fold: the Declaratory Judgment Act, the Administrative Procedure Act, and the general equitable powers of this Court.

6. In its August 21 decision, the Commission made specific factual and legal determinations with respect to the issues raised on the motion, including a wholly unsupported and unsupportable determination that "the subpoena is neither overly broad nor unduly burdensome." (Complaint, Exhibit 3, p. 6) It does not appear from the decision just what, if anything, forms the basis for that determination. Nor does the decision shed any light on whether the subpoena is "necessary" to an investigation of the energy industry, as required by the proviso to 15 U.S.C. § 46.

7. In order to evaluate this issue, in connection with its response to this and other subpoenas, Chase has repeatedly requested the Commission for some evidence that it is proceeding within the scope of its statutory bounds. (See Exs. H, I and J, to my affidavit in support of Chase's motion before the Commission, Complaint, Ex. 2.) On August 6, 1975, we requested, for example, a copy of the papers submitted to the Commission in response to Chase's motion. The Commission, on August 12, denied that request, but elected to consider it further as an appeal under the Freedom of Information Act. Copies of that request, and of the Commission's reply, are annexed hereto as Exhibits A and B.

8. In a further effort to determine whether the subpoena, as modified, is "necessary" to the Commission's investigation, and the basis, if any, for the Commission's determinations, Chase, on September 15, 1975, served upon the Commission a Request for Production of Documents pursuant to Rule 34. The Commission responded on November 3, 1975, declining to produce any documents. Copies of Chase's request, and of the Commission's response, are annexed hereto as Exhibits C and D.

9. It may be appropriate here to note that the standards of burdensomeness which the defendants have applied to

plaintiffs are at considerable variance from those which they deem applicable to themselves. Annexed hereto as Exhibit E are excerpts from the *Nader Report on the Federal Trade Commission* by Cox, Fellmeth and Schulz, describing an exchange of correspondence with these defendants with respect to the production of information regarding their own affairs. As set forth on page 119, defendants are not unaware of the difficulty of assembling information where "many variables [are] involved." Indeed, for them, available information is too burdensome to produce where its compilation "would require at least ten man days of work." Yet the Commission seeks to impose upon Chase—a banking institution over which it lacks any semblance of regulatory jurisdiction—an enormous burden of compliance with its statutorily dubious demands.

10. We respectfully submit that for purposes of this motion the allegations of the complaint must be taken as true, that a genuine issue exists on the unconstitutionality of the present subpoena, as well as on the defendants' lack of authority to issue it, and that this Court has ample jurisdiction over the subject matter of the complaint.

EDWARD J. REILLY
Edward J. Reilly

Sworn to before me
on November 10, 1975

KENNETH A. PERKO, JR.
KENNETH A. PERKO, JR.
NOTARY PUBLIC, State of New York
No. 31-8327535
Qualified in New York County
Commission Expires March 30, 1978

Exhibit A

August 6, 1975

Re: *FTC Investigation File No. 741 0019*

Mr. Charles A. Tobin
Secretary
Federal Trade Commission
Washington, D.C. 20580

DEAR MR. TOBIN:

By letter dated July 30, 1975 (a copy of which is enclosed), we requested that the staff of the Commission furnish us copies of the papers which it filed with the Commission in response to the motion of The Chase Manhattan Corporation to limit or quash the subpoena duces tecum of June 10, 1975. Mr. Horne's reply of August 4, 1975 (a copy of which is enclosed) states that such request should be directed to the Commission because the staff lacks discretion to release such papers. Accordingly, we respectfully request that the Commission furnish us copies of such papers.

Very truly yours,

PETER A. COPELAND

PAC:pl
Enclosures

AIR MAIL

Exhibit B

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

OFFICE OF THE SECRETARY

August 12, 1975

Peter A. Copeland, Esquire
Milbank, Tweed, Hadley & McCloy
One Chase Manhattan Plaza
New York, New York 10005

Re: Staff papers concerning the Commission's response to the Chase Manhattan Corporation's motion to limit or quash the subpoena *duces tecum* of June 10, 1975.

DEAR MR. COPELAND:

This is in response to your letter of August 6, 1975, in which you request that the Commission furnish you copies of the above-cited material.

You should be aware that this material is part of the non-public Commission files and that therefore, any request for access must be made pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Accordingly, your request, although it specifically appeals to the Commission's discretion, must initially be processed through this office as a formal Freedom of Information Act request.

As this office does not have the requisite authority to grant access to internal documents, your request is denied. The documents in question are policymaking in nature and are reflective of staff opinion and judgement, and as such are exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(5).

Your request, however, has been forwarded to the Office of the General Counsel for presentation to the Commission

as a Freedom of Information Act appeal. You will be notified at some later date as to the Commission's final determination.

The undersigned is responsible for the denial of this request.

Sincerely,

C. G. THUOT, SR.
C. G. Thuot, Sr.
Acting Secretary

Exhibit C

Request for Production of Documents

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) and THE CHASE MANHATTAN CORPORATION,
Plaintiffs,

—against—

FEDERAL TRADE COMMISSION; LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members, Federal Trade Commission,
Defendants.

75 CIV. 4417 (JMC)

SIRS:

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, each defendant is requested to produce and to permit inspection and copying of each of the following documents which are in their possession, custody or control at the office of the undersigned on October 27, 1975 at 10:00 A.M.

DEFINITION

As used in this request, the term "document" includes, but is not limited to, the following items, whether printed or recorded, or reproduced by any other mechanical process, or written or produced by hand, namely: affidavits, memoranda, communications, correspondence, telegrams, sum-

Exhibit C

Request for Production of Documents

maries or records of telephone conversations, summaries or records of personal conversations or interviews, minutes of meetings or conferences, diaries, books, records, statistical statements, graphs, charts, accounts, analytical records, reports or summaries of interviews, reports or summaries of investigations, opinions or reports of consultants, notes, drafts of any document, working papers, copies, marginal notations, and any other documents or writings of whatever description.

DOCUMENTS TO BE PRODUCED

1. Each document furnished to any individual defendant by anyone other than the undersigned prior to and in connection with the determinations and decisions set forth in the Commission order of August 21, 1975 to The Chase Manhattan Corporation.

2. Each document reflecting or referring to the fact-finding process by which the defendants arrived at the determinations set forth in that order.

3. Each document reviewed or relied upon by any defendant in making the determinations of fact set forth in that order including, without limitation,

(a) the determination that the subpoena as modified encompasses only such documents as are "necessary" to investigate the energy industry, and

(b) the determination that compliance with the subpoena as modified would not "unduly disrupt" or "clog the conduct of [the plaintiffs'] business."

4. Each document reviewed or relied upon by defendants to refute any statement of fact set forth in any of the seven affidavits submitted in support of the motion by The

Exhibit C

Request for Production of Documents

Chase Manhattan Corporation to limit or quash the Commission's subpoena dated June 10, 1975.

5. Each subpoena and subpoena duces tecum issued at any time in connection with Non-Public Investigation File No. 741 0019 to any of the following: American Smelting & Refining Co., Anaconda Co., Atlantic Richfield Co., Clark Oil & Refining Corp., Crown Central Petroleum Corp., Earth Resources Co., Exxon Corp., Energy Coal Co., Forest Oil Co., Marathon Oil Co., Mobil Oil Corp., Mitchell Energy & Development Corp., Northeast Petroleum Industries, Occidental Petroleum Corp., Phillips Petroleum Co., Southern Natural Resources, Inc., Standard Oil Co. of Indiana, and United Refining Co.

6. Each subpoena and subpoena duces tecum issued at any time in connection with Non-Public Investigation File No. 741 0019 to any other person, partnership or corporation, including, without limitation, any bank or bank holding company.

7. Each document referring or relating in whole or in part to any attempt by the defendants to require reports or answers from any energy company in connection with Non-Public Investigation File No. 741 0019.

Dated: New York, N. Y.
September 15, 1975

Yours, etc.,

MILBANK, TWEED, HADLEY & MCCLOY

By EDWARD J. REILLY
(A Member of the Firm)
1 Chase Manhattan Plaza
New York, N. Y. 10005
Attorneys for Plaintiffs

Exhibit C

Request for Production of Documents

To:

FEDERAL TRADE COMMISSION
Washington, D. C. 20580
Defendant

LEWIS A. ENGMAN
Chairman
Federal Trade Commission
Washington, D. C. 20580
Defendant

PAUL RAND DIXON
Member
Federal Trade Commission
Washington, D. C. 20580
Defendant

M. ELIZABETH HANFORD
Member
Federal Trade Commission
Washington, D. C. 20580
Defendant

STEPHEN A. NYE
Member
Federal Trade Commission
Washington, D. C. 20580
Defendant

Exhibit D

Response of Federal Trade Commission to Plaintiffs' Request for Production of Documents, Dated September 15, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK, et al.,
Plaintiffs,

v.

FEDERAL TRADE COMMISSION, et al.,
Defendants.

75 Civ. 4417
(MEF)

SIRS:

The Federal Trade Commission, and each of its four Commissioners (the "Commission"), hereby submit this response to Plaintiffs' Request for Production of Documents, dated September 15, 1975.

1. The Commission respectfully declines to produce and permit plaintiffs to inspect and copy the documents called for in Plaintiffs' Request for Production of Documents, dated September 15, 1975, on the ground that the instant preenforcement action is beyond the jurisdiction of the court, that, assuming jurisdiction, it is inappropriate for the Court to entertain a preenforcement action in view of the adequacy of the enforcement proceeding as a vehicle for judicial review, and that the complaint does not state a claim upon which relief can be granted. In support of this objection, the Commission refers to its Motion to Dismiss, filed on October 14, 1975, and Memorandum in support of said motion.

2. The Commission further declines to produce the documents called for in plaintiffs' request because, assuming *arguendo* that these preenforcement actions are properly brought, plaintiffs are not entitled to discovery as a

matter of right. It is established that discovery is inappropriate in proceedings to determine the enforceability of agency subpoenas. Enforcement proceedings are summary in nature, with discovery being available, if at all, only in limited circumstances when the court so rules. *See, e.g., FMC* v. *New York Terminal Conference,* 262 F. Supp. 225, 230 (S.D.N.Y. 1966), *aff'd,* 373 F.2d 424 (2d Cir. 1967); *FTC* v. *Browning,* 435 F.2d 96 (D.C. Cir. 1970); *United States* v. *Bowman,* 435 F.2d 467, 469 (3d Cir. 1970); *United States* v. *Salter,* 432 F.2d 697, 700 (1st Cir. 1970); *United States* v. *Howard,* 360 F.2d 373 (3d Cir. 1966); *Kennedy* v. *Lynd,* 306 F.2d 222, 225-226 (5th Cir. 1962), *cert. denied,* 371 U.S. 952 (1963); *FTC* v. *Gallo,* 1973 Trade Cases, ¶ 74,740 (D.D.C. 1973); *FTC* v. *Sherry,* Trade Reg. Rep. (1969 Trade Cases), ¶ 72,906 (D.D.C. 1969); *FTC* v. *Standard American Inc.,* 195 F. Supp. 801, 802 (E.D. Pa. 1961), *aff'd,* 306 F.2d 231 (3d Cir. 1962); *FTC* v. *Scientific Living,* 150 F.Supp. 495, 498 (N.D. Pa. 1957), *appeal dismissed* (3d Cir. order dated Aug. 12, 1957), *cert. denied,* 355 U.S. 940 (1958). The recipient of a Commission subpoena or order to report has no greater right to discovery merely because it seeks to contest the validity of the Commission's subpoena or order in a preenforcement action rather than raise the question in an enforcement action.

3. Production of the documents subject to the instant request would be unnecessary to aid the court in determining whether the subpoena should be enforced. As the Supreme Court has stated, a court need only determine, with reference to the Commission's resolutions authorizing the investigations, the subpoenas issued pursuant thereto, and the record compiled in connection with the motion to quash filed before the Commission, that

> the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought

is reasonably relevant. [*United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950).]

See United States v. *Acker*, 325 F. Supp. 857, 862-863 (S.D.N.Y. 1971). Moreover, prior to determination of the Commission's motion to dismiss, which raises fundamental questions concerning the propriety of this preenforcement action, it would be inappropriate to determine that plaintiffs had made, or could make, a showing that any of the discovery they seek is necessary or appropriate.

4. The Commission further declines to produce the documents called for in paragraphs 1, 2, 3, 4, and 7 of plaintiffs' request because the documents described therein are privileged from discovery by reason of the privilege protecting intra- and inter-governmental documents reflecting advisory opinions and deliberative processes. Many of these same documents are likely to be privileged from disclosure by reason of the attorney-client privilege.

ROBERT J. LEWIS
Robert J. Lewis
General Counsel

GERALD P. NORTON
Gerald P. Norton
Deputy General Counsel

GERALD HARWOOD
Gerald Harwood
Assistant General Counsel

WARREN S. GRIMES
Warren S. Grimes
Attorney

Federal Trade Commission
Washington, D. C. 20580

Exhibit E

THE NADER REPORT ON THE FEDERAL TRADE COMMISSION

BY EDWARD F. COX,
ROBERT C. FELLMETH,
JOHN E. SCHULZ
PREFACE BY RALPH NADER

Exhibit E

THE NADER REPORT

* * *

breakdown of applications for complaint received by the FTC (containing such figures as total numbers of complaints received, numbers from various sources, numbers from various categories of applicants, numbers by state, and so on).

Copies of these memos were requested from Monroe Day, the administrative officer, who prepares them. He stated that he had been told not to give us any information. We then approached the Chairman, who denied our request, reciting the "inter-agency memorandum" exemption to the Freedom of Information Act. We responded that these particular memoranda did not seem to contain the sort of information which justifies that exemption (e.g., critical, evaluative comments; notes of plans, tactics, etc.—information which agency personnel would be loathe to include in memos if they were public); these memos, in contrast, contain only objective factual data. The Chairman was unimpressed; repeating the phrase "inter-agency memoranda," he refused again.

Copies of these memoranda were eventually made available by Commission action after we had filed formal request.

We encountered two other information problems which involve agency memoranda. One was a single case of refusal by FTC staff and the Chairman to *identify* certain specific documents in the Commission's possession sufficiently to permit a subsequent request for access to them. This sort of ploy is a problem since the Freedom of Information Act and FTC rules require disclosure only of "identifiable records." The Attorney General's Memorandum analyzing the act, however, makes it clear that agencies should not try to avoid disclosing documents by refusing to identify them where the requesting party gives

a reasonably specific description of what he wants. Says the Memorandum: "This requirement of identification is not to be used as a method of withholding records."[1]

The requirement was so used in this case. Because we could not identify the records in question (certain compliance files whose exact form we did not know), we could not include them in our formal request to the Commission for data, and they have never been disclosed.

The other problem, somewhat related, is really as much a matter of information policy. Briefly, the FTC fails to keep accurate records of its performance. It is thus able to turn down requests for relevant information for the extraordinary reason that it has no information on the topics of interest and that to process basic data in order to produce such information would be either impossible or prohibitively expensive. We encountered this phenomenon several times, but the clearest example was the Commission's response to certain demands for information made in a formal request submitted to the agency under Section 4.11 of its rules. This request, made September 30, 1968, by letter under oath from John Schulz to Chairman Dixon included the following questions[2] about enforcement costs in the Bureau of Deceptive Practices:

Question 6.

What are the total expenditures which have been allocated to the prosecution (and/or handling) of these

---

[1] *Attorney General's Memorandum*, p. 23. (Quoting Senate Report on the Act, p. 8.)

[2] Modeled on identical questions asked in 1964 of the Commission by Senator Gordon Allott of Colorado about the Bureau of Restraint of Trade. Senator Allott's questions were answered, suggesting that the Commission's response to our request overstates things a bit and that the FTC does not treat citizens the same way it treats members of the Senate Committee on Commerce.

matters [deceptive-practice matters in litigation, consent settlement, informal disposition, under investigation for guides, etc.] up to the present time?

Question 7.

What is the present status of each of these matters and what additional funds does the Commission anticipate will be required to resolve each of these cases, assuming respondents (participants) exhaust all administrative and judicial remedies?

Previous answers indicate that the total number of matters in each category is very small; for example, 24 cases in litigation, 23 pending consent settlement, 29 pending informal settlement, etc. Yet the Commission's response of October 25 to questions 6 and 7 was:

Question 6.

The basic information is available from the Commission's Time and Action data. . . . However, in order to compile the information requested, the Commission staff would be required to write at least four computer programs. Several days of machine time would also be required. This would require at least ten man days of work.

Exhibit E

Question 7.

> The basic information is *not presently available.* Because of the many variables involved, the Commission has not been successful in the past in accurately anticipating total costs.

It seems that this sort of information should have a high priority because of its usefulness for cost-benefit analysis.

Needless to say, failure to keep adequate files and records is more the responsibility of the staff heads than the Commissioners. In fact, even the Commissioners occasionally discover that information in which they are interested does not exist or cannot be retrieved because of inadequate record-keeping. For example, in April, 1967, the Commission directed its staff to submit a report on the agency's experience with insurance cases over the last five years, including among other things, "the number of complaints received." Responded the staff:

> Number of Complaints Received
>
> The basic information for this item is contained primarily in the closed preliminary correspondence files in the Division of Legal Records. These files are not indexed as to subject matter and include anti-trust as well as deceptive practice matters, general inquiries and other types of letters as well as complaints. Thus, to extract the letters containing complaints regarding insurance would require an individual examination of the entire number filed

* * *

Affidavit of Michael P. Esposito, Jr., in Opposition

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) and THE CHASE MANHATTAN CORPORATION, *Plaintiffs,* *against* FEDERAL TRADE COMMISSION; LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members, Federal Trade Commission, *Defendants.*	75 Civ. 4417 (MEF) Affidavit in Opposition to Defendants' Motion to Dismiss For referral to Judge Frankel after docketing

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MICHAEL P. ESPOSITO, JR., being duly sworn, says:

1. I am the Controller of The Chase Manhattan Corporation and a Vice President of The Chase Manhattan Bank (National Association) in charge of the Financial Controls Group. The Chase Manhattan Corporation and The Chase Manhattan Bank are hereinafter collectively referred to as "Chase." I make this affidavit in opposition to the defendants' motion to dismiss pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

2. I have read the Commission's subpoena duces tecum dated June 10, 1975, together with the Commission's order dated August 21, 1975, to determine the extent to which compliance with the subpoena as modified would require the search and production of financial records maintained by Chase in connection with its dealings during the past

decade with the eighteen energy companies listed in the appendix to the subpoena.

3. The Commission's order of August 21, 1975 does not lessen to any substantial degree Chase's burden of compliance with the Commission's subpoena. For example, paragraph 14(e) continues to call for production of "documents sufficient to identify" each and every "commercial, trust and operating service performed for the listed companies, the dollar value charged for each such service and the dollar value to your bank attributed to each such service provided by your bank."

4. As I stated in my July 7, 1975 affidavit (Complaint, Ex. 2), such information as demanded by paragraph 14(e) is not maintained by Chase in any readily accessible format. In order to comply with this demand it would be necessary to review hundreds of thousands of pages of summary performance reports, transaction journals, and spread sheets in order to identify the millions of individual service transactions which took place during the ten-year period covered by the subpoena. Also, many of the individual transaction "tickets" are insufficient to identify readily a particular customer or even a particular department within Chase.

5. At my request, Chase's Financial Management and Reports Division has undertaken a detailed cost analysis of the enormous search, retrieval and copying effort necessary to comply with the Commission's subpoena. Our cost analysis shows that compliance with the Commission's subpoena would affect eight departments of Chase to varying degrees, ranging from one person for one day to nine persons for one year. The analysis further shows that full compliance with the Commission's subpoena would require at least 11,144 man days of work and would cost over $565,000. The total time required was estimated as time spent to the exclusion

of normal duties and was computed at regular, non-overtime rates. The following is a summary of that analysis:

	FILES		
rea	Research and Retrieval	Xeroxing and/or Filming	Total Cost
1. International Funding and Foreign Exchange Total Time: Minimum 6 mos Total Staff: 7	$ 40,500	$125,000	$165,500
2. Corporate Banking Total Time: 3½ years Total Staff: 2	140,000	5,000	145,000
3. Data Control Total Time: 1 year Total Staff: 9	82,560	1,000	83,560
4. Cost and Standards Total Time: 6 mos Total Staff: 5		70,000	70,000
5. Credit Policy Total Time: 2 mos Total Staff: 48	65,000	3,045	68,045
6. Domestic Credit Files Total Time: 70 Weeks Total Staff: 10	1,022	32,262	33,284
7. Trust and CIMC Total Time: 24 hours Total Staff: 1	120	380	500
8. Information Services Total Time: 1 man day Total Staff: 1		35	35
Total Cost			$565,924

6. On the basis of the foregoing analysis, compliance with the Commission's subpoena would disrupt Chase's day-to-day banking operations.

MICHAEL P. ESPOSITO, JR.
Michael P. Esposito, Jr.

Sworn to before me on
November 12, 1975

PAUL J. URBANIA

PAUL J. URBANIA
NOTARY PUBLIC, State of New York
No. 43-9822586
Qualified in Richmond County
Commission Expires March 30, 1976
Certificate filed in NY County

Affidavit of C. Chesney McCracken

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL TRADE COMMISSION

In the Matter of
NON-PUBLIC INVESTIGATION
INVESTIGATION FILE NO. 741 0019

C. CHESNEY MCCRACKEN, being duly sworn, says:

1. I am a Vice President of Morgan Guaranty Trust Company of New York ("Morgan Guaranty" or "the Bank"), and have been continuously employed by Morgan Guaranty since 1954, when I joined the Bank as a trainee in the credit department. I am presently an account officer in the Public Utilities Department of the National Banking Division. Prior to my present position, I worked as an account officer in the New England District of the General Banking Division—presently the National Banking Division—as an account officer in the Petroleum Department, and as manager of the Credit Department.

2. I have read the subpoena *duces tecum* of the Federal Trade Commission (the "Subpoena") dated June 10, 1975 addressed to E. C. Patterson, Chairman of J. P. Morgan & Co. Incorporated, the holding company and owner of all the outstanding stock of Morgan Guaranty. During my twenty years experience in the Bank, I have become familiar with the structure, operations and procedures of Morgan Guaranty and make this affidavit in support of the motion to quash the Subpoena.

The Documents Requested Are Not Readily Available

3. The Subpoena period covered—since January 1, 1965—and the vast amount of documents requested magnify the burden which Morgan Guaranty would face in seeking information requested. In light of the Subpoena's broad definition of "documents" and the broad and sweeping demands for such documents, Morgan Guaranty would have to commence a thorough investigation not only of most of the current files in the Bank, but also those that long ago were placed in the Bank's storage archives. The documents demanded for ten years cannot be readily retrieved since they have not been programmed into a computer and since they are filed in various places in the Bank's storage warehouse and in the current files of the various departments of the Bank. Where the Subpoena requires transactional-type records of the Bank (*e.g.*, Subpoena ¶ 10) the day-to-day business files of many departments—often consisting of multitudes of documents of a ministerial nature—will have to be combed. The Bank does not have a central file to hold all of the documents pertaining to such things as policy or organizational structure and the like.

The Subpoena is Too Burdensome Because it Calls For Massive Amounts of Information Readily Available from the Energy Companies

4. Counsel have informed me that the Commission may not require production of documents from the Bank unless the information contained in the document is not available elsewhere. In this regard the Subpoena is especially burdensome since it requires the Bank to locate and produce an enormous amount of information which is far more readily available from the energy companies themselves. For certain document requests the Bank would be required to search files relating to numerous energy companies and their subsidiaries, affiliates, predecessors and successors. The information requested about the financial transactions

of the energy companies would presumably be far more accessible at the financial office of each energy company than it would be to the Bank.

5. Compounding the problem is the fact that Morgan Guaranty does not necessarily have information available to it to determine accurately whether it has documents relating to the affiliates, subsidiaries, predecessors and successors of the energy companies listed in the Appendix to the Subpoena so the Bank would have to contact the companies themselves.

6. Subpoena paragraphs 14(a) through (d) call for an enormous number of ministerial type documents implementing commercial arrangements with clients. Most of these documents for the Subpoena period are stored in the Bank's archives; locating these would require the significant task of repeating a separate file search for each of the years covered by the Subpoena. Current records are filed in numerous places throughout the Bank.

7. The demand for average and maximum time and demand deposits and balances maintained by the companies listed in the Subpoena Appendix will present especially difficult problems for the Bank. Certain of the larger energy companies may maintain many different accounts with the Bank so that identifying and then searching the account files for *one* energy company would be a significant burden.

8. To supply the documents demanded by Subpoena paragraph 14(e) Morgan Guaranty might have to search the files of many of the departments in the Bank which do work on a fee or commission basis, since many of these departments may have provided services to energy companies which would result in documents called for by the Subpoena. For example, if the Corporate Trust Depart-

ment serves as trustee on a bond issue for any of the energy companies listed in the Appendix to the Subpoena, that department would have its own fee schedule and would keep separate files from those which the "energy departments" (as that term is defined in the Subpoena) might keep. It should be far easier for each energy company to supply its own financial information in response to Subpoena paragraph 14 than for the Bank to supply this information for all energy companies.

9. Another example of unreasonable burden placed on the Bank by the Subpoena is paragraph 10, which calls for a massive amount of information far more readily available from the energy companies. The paragraph reads as follows:

> "10. Copies of all documents which identify or quantify business done with, business sought from, accounts maintained by and/or services performed for energy companies with which bank directors or employees were affiliated as directors or employees during the subpoena period or any part thereof."

10. Subpoena paragraph 10, by its own terms, essentially demands a 10-year history of the Bank's business done with or sought from the applicable energy companies. To comply with this demand Morgan Guaranty will have to examine a staggering number of its files—both current and archived—throughout the Bank. The Bank's departments include commercial credits, corporate research, corporate trust, custody, financial services, foreign exchange, government bond, pension trust and stock transfer. Many of the files in these departments are voluminous. Many of the documents in these files could in part or in whole identify or quantify "business done with" or "business sought from" an energy company.

The Subpoena Requires Production of a Massive Array of Internal Documents of the Bank

11. Counsel informs me that the Commission has no authority to demand production of documents dealing solely with the internal operations of the Bank—its structure, practices and procedures. The Subpoena is especially burdensome in requiring production of large numbers of documents which are internal to the workings of the Bank.

12. An illustration of this problem is provided by Subpoena paragraph 3 which requires production of

> "3. Such documents as will show:
>
> (a) the organization of your bank, including all departments, divisions, committees, working groups and other components;
>
> (b) the names and titles of those persons holding executive positions in your bank, and the names of heads of departments, divisions, committees and headquarters working groups;
>
> (c) statements of goals, strategies, plans of action for the growth, performance and development of your bank during the subpoena period to the extent that they apply to or affect the energy departments.

13. This paragraph, which by its own terms does not limit itself to the energy industry, requires in effect the production of documents which, when put together, would show a 10-year organizational history of Morgan Guaranty. Aside from the seeming irrelevance of this demand to an investigation of energy companies, the paragraph places difficult burdens on the Bank. For example, the paragraph requires production of documents relating to "all" departments, divisions, committees, working groups and other components. The Bank has no records by which to identify the existence of these types of units. Since there is often no pattern to the creation of these units

or to their location, it would be necessary first to conduct many interviews to ascertain what ad hoc committees might exist or have existed. Nor would location of working groups be any less burdensome, especially because working groups can consist, for example, of two officers meeting together to discuss and resolve a common problem —even one totally unrelated to the energy industry.

14. With respect to Subpoena paragraph 3(c), almost every statement of the Bank relating to its "goals, strategies and plans of action" applies to or affects the "energy departments". For example, statements regarding a change in personnel policies for the entire bank could be said to apply to or affect personnel in the energy departments. Documents containing the kinds of policy statements required by Subpoena paragraph 3 are not filed in any central location. General files of many of the Bank's departments would have to be searched.

15. Another example of the Subpoena's burdensome request for internal documents is paragraph 11, which states as follows:

> "11. With regard to meetings of the Board of Directors, the Executive Committee of the Board and the Examining Committee of the Board of your bank supply for the subpoena period:
>
> (a) copies of agenda, and
>
> (b) copies of all documents memorializing deliberations of their meetings at which directors who were simultaneously directors of energy companies were present."

16. Since subparagraph (b) is not limited to meetings where energy matters were discussed, every page of all the minutes of every board committee meeting during the ten-year subpoena period will have to be produced, since there have been directors on the Bank's board who have simul-

taneously been directors of energy companies for the entire period covered by the Subpoena. Over a ten-year period, this would mean producing the agenda and minutes and all materials presented to the Board for over 250 meetings.

17. An enormous number of the business files of the Bank would again have to be searched to comply with paragraphs 12, 13 and 15 of the Subpoena. For example, with respect to the 18 companies listed in the Appendix to the Subpoena and their many affiliates and subsidiaries, paragraph 15 of the Subpoena might be read to require the Bank to produce practically every single paper prepared by any employee of the Bank in connection with business conducted with those companies. Paragraph 13(d) through (i) of the Subpoena could involve investigating the personal files of every person who has worked for the Bank at any time during the ten-year subpoena period.

18. Because of the scope of the Subpoena's demands it is difficult to estimate the actual number of documents to be produced. However, it is clear that the demands encompass many hundreds of thousands of documents located in numerous files of various departments of the Bank.

19. For these reasons, even to respond to a far more narrowly drawn subpoena, would require extremely difficult and time consuming file searches and interviews to obtain information internal to the workings of the Bank and not necessary to the Commission's energy investigation.

/s/ C. CHESNEY MCCRACKEN
C. Chesney McCracken

Sworn to before me this 2nd day
of July, 1975.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIRST NATIONAL CITY BANK, *vs.* FEDERAL TRADE COMMISSION,	75 Civ. 4365
THE CHASE MANHATTAN BANK, *vs.* FEDERAL TRADE COMMISSION,	75 Civ. 4417
MELLON NATIONAL BANK CORP., *vs.* FEDERAL TRADE COMMISSION,	75 Civ. 4449
CHEMICAL NEW YORK CORP., *vs.* FEDERAL TRADE COMMISSION,	75 Civ. 4478
MORGAN-GUARANTY TRUST CO., *vs.* FEDERAL TRADE COMMISSION,	75 Civ. 4486

December 30, 1975,
9:30 A.M.

Before:
HON. MARVIN E. FRANKEL,
District Judge

APPEARANCES:

SHEARMAN & STERLING, ESQS.,
Attorneys for First National City Bank;
John E. Hoffman, Jr., Esq.
Frederick A. Gertz, Esq., of Counsel.

MILBANK, TWEED, HADLEY & MCCLOY, ESQS.,
Attorneys for The Chase Manhattan Bank;
Kenneth A. Perko, Jr., Esq.,
Peter A. Copeland, Esq., of Counsel.

CURTIS, MALLET-PREVOST, COLT & MOSLE, ESQS.,
Attorneys for Defendant Mellon National Bank Corp.;
John Egan, Esq.,
Joseph Katarincic, Esq., of Counsel.

CRAVATH, SWAINE & MOORE, ESQS.,
Attorneys for Chemical New York Corp.;
Burton K. Gordon, Esq., of Counsel.

DAVIS, POLK & WARDWELL, ESQS.,
Attorneys for Morgan-Guaranty Trust Co.;
Henry Korn, Esq.,
Steven Goldstone, Esq., of Counsel.

FEDERAL TRADE COMMISSION
Warren Grimes, Esq.,
William Horne, Esq.,
Attorneys for Federal Trade Commission.

Also Present:

V. Pamela Davis, Assistant U.S. Attorney.

MISS DAVIS: Your Honor, if I may—

THE CLERK: Let me call the case, please.

In the matter of First National City Bank, Chase Manhattan Bank, Mellon National Bank Corp., Chemical New York Corporation, Morgan-Guaranty Trust Company v. Federal Trade Commission.

THE COURT: Okay. Do you want to spring back up?

MISS DAVIS: If I may, your Honor. My name is Pam Davis. I an an Assistant United States Attorney and I would like to introduce your Honor to William Horne and Warren Grimes of the Federal Trade Commission, appearing in this action.

THE COURT: Okay. Glad to have them here.

I will tell you, ladies and gentlemen, since inviting you in and reading the papers, I came to have a feeling that this should probably be a relatively short presentation. I mention that because of the imposing quantity of you that are here.

I will tell you, so you will know what the situation is, that having had time to study the papers and having been apprised now that the Commission has moved in the usual way for enforcement of its subpoenas—is that correct, gentlemen?

MR. GRIMES: Yes.

THE COURT: I am, I suppose, about 95 percent disposed to grant the motions to dismiss these complaints and I figured I might just as well tell you that to save your time and mine, and to ask those who speak for the plaintiffs to address themselves to just a couple of questions that interest me, and then we will see where that comes out.

First, I would like to know, since there has been no opportunity in the scheduling of this thing for a written

response, whether any of the plaintiffs might possibly have changed their position as to the supposed need for pre-enforcement review, now that a proceeding for enforcement has been brought, and I will hear any of the plaintiffs' counsel on that subject.

MR. GOLDSTONE: Your Honor, my name is Steven Goldstone from Davis, Polk & Wardwell, representing Morgan-Guaranty.

Yes, I think that as far as Morgan-Guaranty goes we would, in fact more strongly, not want to participate in the enforcement proceeding, and rather litigate the issue of jurisdiction in this court.

In our briefs we told the Court about our concerns for possible criminal liability. I think in the briefs before the Court we may not have stressed strongly enough our belief that in the summary proceeding in Washington that the FTC has initiated, we will not, we believe, be able to litigate fully what we think is a vital issue to our clients and we think is important for the Court, and that is whether the FTC is going beyond its jurisdictional authority in issuing these subpoenas.

We have—

THE COURT: Why can't you litigate that there?

MR. GOLDSTONE: Well, your Honor, the FTC takes the position, and it is not clear to us whether it is correct or not, but they take the position that their enforcement proceeding is a summary proceeding and does not admit of discovery.

We think discovery in this case is vital and we think that plenary jurisdiction of the court is of vital requisite to litigate.

THE COURT: Why is that? If you need discovery to show the want of jurisdiction and if the want of jurisdiction

is an open question, what disables the District Court on the enforcement proceeding from giving you discovery?

I don't understand that at all. Will you take that position in the enforcement court if I send you away from here?

MR. GOLDSTONE: That we need discovery?

THE COURT: That you can't have discovery there because it is an enforcement proceeding.

MR. GOLDSTONE: None, we won't take that position, your Honor, but we face the risk that we won't get that discovery.

THE COURT: I know you face the risk. Life is filled with risks, but are you entitled to it there or are you not? What is your position on this record?

MR. GOLDSTONE: We will take the position that we are entitled to it.

THE COURT: All right. If that is your position there, I think that you ought to stick to it, and if you are not entitled to it there, then it seems to me your effort to make an end run around the prescribed enforcement proceeding should probably fail on that ground in addition to the others that seem persuasive to me.

MR. GOLDSTONE: Very well, your Honor. The only thing I would say is that in determining whether seeking pre-enforcement relief is proper and whether this case is ripe for adjudication, not only are we facing, we think, the risk of criminal penalties which makes it proper for us to seek pre-enforcement relief, and for this court to take jurisdiction, but we also face the risk—certainly the FTC has already expressed that they will oppose our right to take discovery—

THE COURT: Do you think, Mr. Goldstone, that you really face the risk of criminal penalties? And if you think that, why as an attorney for your clients do you think that? Do you think there is a genuine exposure to the possibility of criminal penalties in this case?

MR. GOLDSTONE: Your Honor, I would say this to the Court: I would say that I certainly would, as lawyer for my client, I would certainly oppose it vigorously in that I think we are acting in good faith and should not incur criminal penalties.

But I couldn't say that we don't face the risk of criminal penalties since the statute states that we face that risk.

THE COURT: What about the fact that all the plaintiffs here are corporations? Are they exposed to the risk of criminal prosecution?

MR. GOLDSTONE: As a primary matter, the presidents of each of the banks face that risk and—

THE COURT: No, no, I didn't ask you that. I asked you in light of the fact that the only plaintiffs I have here are corporations, can they claim the risk of criminal prosecution under the statutes that we deal with.

MR. GOLDSTONE: Well, on the statute that we deal with, the statute does use the term "person." It is not clear what that term means.

THE COURT: Hasn't it been held authoritatively not to include corporations?

MR. GOLDSTONE: I don't believe so, your Honor.

THE COURT: Let me ask government counsel about that.

MR. GRIMES: Your Honor, in St. Regis, the Supreme Court in dicta—I think it would have been classified as dicta—did interpret that that way.

THE COURT: You know, Supreme Court dictum is pretty potent stuff when you get down as low as this. Does the government question the authority of that dictum?

MR. GRIMES: Criminal penalties against individuals and I —

THE COURT: Is there any question in your mind that you'd be bound by that position as government counsel if later you somehow got the Attorney General to start a criminal proceeding?

Mr. GRIMES: There's no question in my mind—

THE COURT: Not in my mind either. It seems to be clear to me, and we do have a record, apart from the other imaginary aspects of that problem, in this particular series of questions, the threat of criminal prosecution as a practical matter is nil, and I suppose the Court ought to face that fact.

MR. HOFFMAN: Your Honor, I am John Hoffman of Sherman & Sterling, representing First National City Bank.

In response to your first inquiry as to whether our position has changed in respect of the relief that we sought in commencing these actions, in light of the enforcement action now commenced in Washington, the answer of my client is "No," your Honor.

I think the significance and the only significance of that proceeding presently pending in Washington is that the principal argument made by the FTC in their brief in support of their motion to dismiss is not moot.

They contend that the issues regarding the jurisdiction of the Federal Trade Commission to conduct this investigation insofar as it is directed at the banks, that issue is not moot.

The FTC has decided to seek enforcement of these subpoenas and enforcement of these subpoenas in their en-

tirety, not as purportedly so limited by the letter of the Federal Trade Commission, denying our motion, our last motion to have those subpoenas quashed before the Commission.

We only received the papers—

THE COURT: Is it your position, Mr. Hoffman, that it is on the record that will be before the District Court—that is in Washington, yes?

MR. HOFFMAN: That's correct, your Honor.

THE COURT: Is it your position that it is open to the FTC to seek enforcement of these subpoenas in their full scope without regard to any limiting things the FTC has said to you before now?

MR. HOFFMAN: The Federal Trade Commission, your Honor, has proposed a form of order that is attached to the order to show cause which directs full compliance with the subpoenas.

THE COURT: That is not what I asked you, Mr. Hoffman.

I asked you, is it your position, because you are telling me what issues are open, that it is open to the FTC to seek enforcement in full of the subpoenas notwithstanding anything—

MR. HOFFMAN: Your Honor, I would say no, it is not open to them. Nevertheless, they have done it and that is what they are asking the Court to do in Washington.

THE COURT: I know. But you can't present a position to me as yours here which is different from your position there as a ground for my acting here in a way that you desire when you know that in another court of co-equal jurisdiction that is not going to be your position at all. I want your position known here.

MR. HOFFMAN: Your Honor, I don't intend to do any such thing.

I was about to say that we only received the papers with respect to the Washington action on Christmas eve. While we have only had a chance to review them briefly, I can state to the Court that it is our intention, for our client, to move to transfer the venue of that proceeding to New York. We haven't done that yet, your Honor, as we have only received the papers recently. But the point that I was making previously is that the Federal Trade Commission, saying the issues of its jurisdiction in this investigation are not ripe, has been rendered moot. The only element that they claimed was missing in terms of completing ripeness for judicial review was a determination by the Commission to proceed with this investigation against the banks. They refer to that as being a missing element, your Honor.

THE COURT: I know, but that doesn't help me, Mr. Hoffman. They say it gets ripe when there is an enforcement proceeding, and here there was none, and when it is ripe, you go there where the thing has ripened and fight out the questions. That's their position.

To say that the proceeding there which they say is the only kind in which you should raise those issues has ripened the proceeding here is really not to state their position as being helpful here. They say you got to go there. If they are wrong in that, then they are wrong. But that hasn't ripened my cases. It has ripened their position.

MR. HOFFMAN: I don't think it was a necessary element for our case here that they have brought the enforcement proceeding, otherwise we wouldn't have filed these actions then, your Honor, in New York.

THE COURT: I understand.

MR. HOFFMAN: We did so because we felt that the issues were ripe for determination.

We felt we had to file that complaint prior to the return date of the subpoena because it seemed to us that our clients

should not be put in the position of running the risk of incurring criminal liability, and I would say that it was a very, very remote risk, your Honor.

I will not stand here and say that I consider the likelihood of the Federal Trade Commission prosecuting Mr. Wriston, the Chairman of the City Corp. for not showing up down in Washington. I consider that the remotest possibility imaginable.

Nevertheless, the Supreme Court has said in the Abbott Laboratories case—Justice Harlan said, in response to a representation from the Solicitor General, that they wouldn't prosecute, but that wasn't enough. The fact that a statute provides for criminal penalties is the fact that the Court must deal with, not the likelihood whether the Attorney General or the United States Attorney's office will decide to prosecute.

The fact that there is a statute providing those criminal penalties is the factor that must be considered by the Court.

THE COURT: Can you tell me, if you are worried about this—it's Mr. Wriston, you say?

MR. HOFFMAN: That's correct.

THE COURT: Why isn't he a plaintiff here?

MR. HOFFMAN: Your Honor, I think that the subpoena was directed to get information out of the bank, not Mr. Wriston. He was named initially as chairman of the bank. He is also the chairman of the bank holding company but it is bank information that is sought.

If we are successful in this action, the protection of Mr. Wriston will be as adequate as if we had joined him as a plaintiff.

THE COURT: I understand that, but if he is not a plaintiff here, how can his remote exposure to criminal liability be a consideration in this case?

MR. HOFFMAN: Because the relief that we are seeking your Honor, is addressed to the jurisdiction of the Federal Trade Commission to conduct an investigation. It is that investigation in which a subpoena was issued, addressed to Mr. Wriston, but seeking information from the bank regarding the Bank's operations and business practices and allocation of credit and that kind of thing.

THE COURT: Let me ask you this: Suppose you, whatever that phrase means, have not been resisting in good faith as it might ultimately be determined in a criminal prosecution. How does this proceeding help you?

MR. HOFFMAN: This proceeding, your Honor, if it is determined by the Court that the Federal Trade Commission has no jurisdiction to conduct this investigation, then the subpoena was invalid at the time it was issued, and I think that would be an adequate defense for Mr. Wriston.

THE COURT: That is not what I asked you about.

Suppose you lose this case, which is also possible. How would the bringing of this case help you with the problem of good faith that affects the threat of criminal prosecution you talk about?

MR. HOFFMAN: I think it would help immensely, your Honor. Mr. Wriston is not a stranger to the First National City Bank or City Corp. and these actions that we are taking in filing this complaint are taken with his authority.

THE COURT: But suppose you are not in good faith? How would these actions help you?

MR. HOFFMAN: Your Honor, I don't think that the issues presented to this court involve whether or not City Bank acted in good faith in commencing the action or whether—

THE COURT: I understand that. That is why I don't understand why the threat of criminal prosecution cuts any ice here whatever, because if you are later prosecuted

or your Mr. Wriston is prosecuted, I am now suggesting to you that the bringing of this action won't establish or affect whether you have been resisting in good faith altogether.

MR. HOFFMAN: Your Honor, all I can say, I hear the suggestion and I disagree with it. I think the fact that we did everything that we could to seek review of the subpoena and to ask the Court to invoke its jurisdiction to consider whether this agency exceeded its constitutional statutory authority is as much good faith as we have to bear on the situation.

THE COURT: I see. I understand your position and if it turned out that this court were to reach the question of jurisdiction and hold your position frivolous, would you still be in good faith as might affect the potential criminal prosecution that you say concerns you?

MR. HOFFMAN: We certainly would contend so, your Honor, because we have taken every action that we could to seek, first, administrative and, second, judicial review of the subpoenas and I don't know what more can be done in the exercise of good faith than to do that or to simply roll over and comply with the subpoena that we feel is invalid.

THE COURT: What about something less, like your stating to the FTC your position as you did in your brief, that it lacks jurisdiction and you are raising that question in good faith, and whenever they got around to bringing an enforcement proceeding of the usual kind, you will litigate that question there? Why wouldn't that cover the subject as well as your bringing of what is at least an unusual kind of action in advance of the attempt to enforce an administrative subpoena?

MR. HOFFMAN: It would cover the question your Honor raises regarding good faith but would not provide the protection that we sought in commencing this action.

In other words, your Honor, we would have had to run the risk of simply not complying, telling the Federal Trade Commission that we were not going to Washington in response to that subpoena, and then wait to see whether they decided to move for enforcement or not, and in the meantime, running the risk, albeit remote, running the risk of a prosecution under a criminal statute that is there, and the fact that I don't believe they would prosecute under that statute in these circumstances may give me comfort and may give my client comfort, but the Supreme Court has announced that it is the presence of that statute which is significant, and that very point was picked up in the most recent case I know of in this area, your Honor, the A. O. Smith case which we cite in our brief.

THE COURT: Okay. Thank you, Mr. Hoffman.

MR. PERKO: My name is Kenneth A. Perko, Jr. with Milbank, Tweed, Hadley & McCloy for the Chase Manhattan Bank.

I think it is important to point out that Section 10, which is the statute providing for criminal penalties, which the FTC says are theoretical and contends can apply only to individuals, is in no way limited to individuals named in the subpoena. I don't see why we are limiting ourselves to the thought that only the individual called upon to respond could be liable for sanctions under Section 10.

Now, we have received prior—

THE COURT: The only reason you are limited is that if a case is said to be justified by somebody's exposure to criminal prosecution, then the somebody who has that justification ought to be here making it, not somebody else. That is my problem with that.

MR. PERKO: Your Honor, we are prepared to join the appropriate officers of the Chase Manhattan Bank who submitted affidavits to the Commission, who have submitted affi-

davits to this Court with respect to the grounds for non-compliance.

We do not see on the face of the statute that it is non-applicable to anyone but the chairman of the bank who is named in the subpoena. These are, in fact, the officers who make the determination as to the burden of compliance and made what we feel is in this case a strong and compelling showing that the subpoena served on Chase is neither necessary to the investigation of the oil industry nor possible of compliance.

We are greatly disturbed by the papers that were set before Judge Smith in Washington by the FTC insofar as they affect Chase. We don't know what presentation other banks may have made to the FTC in connection with their motions.

We feel, however, that we made a very compelling showing. We have annexed our motion papers as Exhibit 2 to our complaint in this action. Frankly, we think one can read our complaint in this action, the subpoena, the motion and the Commission's determination, and come quickly to the conclusion that the Commission's determination bears no relationship to the facts that were presented to it on the motion.

We find in the papers laid before Judge Smith a representation in the Commission's memorandum that none of the bank respondents here made any representation, made any detailed assessment of the costs of compliance.

Now, that is just downright false as to Chase. We see no reason—

THE COURT: Wait a minute. I don't understand why you are arguing to me something that appears in some papers before another judge.

MR. PERKO: The argument is being advanced here, I gather, your Honor, that because of the commencement of

that action somehow the status of this case is changed, and we, on behalf of Chase, do not agree that it has, and we wish to suggest to your Honor that had Judge Smith had before him the record of Chase's motion before the Commission and the full record of this case, he may very well not have signed that order to show cause.

These are the issues which we intend to raise in Washington on the return date, and we think it is a false premise for the FTC or for this Court or for anyone else to assume that because that order was signed on the kind of showing made to Judge Smith that he has any inclination to go forward with the case down there.

Moreover, we think it is significant—

THE COURT: I don't understand that at all. If he doesn't go forward with that case down there, you are home free, aren't you?

MR. PERKO: I don't see how that puts us home free from possible prosecution sanctions, your Honor.

THE COURT: Oh, heavens, if the judge won't even give you the standard kind of enforcement, are you really standing there saying you are then faced with a next round of a criminal prosecution?

MR. PERKO: If I go forward, your Honor, I mean to refer to Mr. Hoffman's assertion of what he will do on behalf of his client, and that is move for transfer here, where the investigation has been in progress for more than one year. The FTC investigators were up and down through the Chase Manhattan Bank, reading all of its board of directors' minutes for the past 15 years.

THE COURT: Look, if he transfer it here, then this whole discussion is academic. I won't send it back to him. We won't send it back to him. We will take it, because it is pretty clear to me that the FTC is entitled to have its claim

for enforcement heard somewhere, and then you can defend on whatever grounds are open to you in such a proceeding.

MR. PERKO: What does not remain academic, we contend, your Honor, is whether or not we are indeed entitled to commence and to prosecute with the appropriate discovery allowable in such actions the action that we have commenced.

We frankly feel that this is a very unique case. There is no precedent for it in any other court, in any other jurisdiction.

This appears to be on its face an attempt by the FTC to assert a plenary subpoena power, to investigate banks and the banking affairs of banks, which, as we read the relevant statute, flies clearly in the face of the necessities which Congress adopted in 1974.

We think by reason—

THE COURT: I have read about that.

MR. PERKO: —of the importance of the case, discovery is necessary on those facts.

THE COURT: Okay.

Does anybody else want to be heard on the couple of questions that I have raised here?

Did the FTC have something further?

MR. GRIMES: I just had two brief comments, your Honor.

On this question of good faith, we do not feel that the bringing of these actions in any way demonstrates whether or not a plaintiff is in good faith.

I should point out that if the bringing of this action did demonstrate plaintiffs' good faith, I would think dismissal of the action which reference to the ongoing enforcement proceedings would protect that good faith. In other words, if it is made clear in the dismissal that the dismissal was taken with a view to allowing these issues to be litigated in the now-initiated enforcement proceeding, if that course

were taken, I would think plaintiffs' position would be just as strong on the issue of good faith.

I might also add that with respect to this remark that this case is unprecedented, there certainly is, indeed, no precedent for the position of plaintiffs that they are entitled to pre-enforcement review of a subpoena. The only two courts that have faced that issue in recent years, the 8th Circuit in Anheuser-Busch, and the Atlantic Ridgefield case in the D rict Court in Texas, both ruled that the pre-enforcem action should be dismissed.

THE COURT: Okay.

Let me look at it some more and we will get your decision in the next couple of days.

Thank you all very much.

Memorandum

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIRST NATIONAL CITY BANK, et al., *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4365 (MEF)
THE CHASE MANHATTAN BANK, et al., *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4417 (MEF)
MELLON NATIONAL CORPORATION, *Plaintiff,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4449 (MEF)
CHEMICAL NEW YORK CORPORATION, et al., *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4478 (MEF)
MORGAN GUARANTY TRUST COMPANY OF NEW YORK, et al., *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4486 (MEF)

Memorandum

FRANKEL, *D.J.*

In these consolidated cases, plaintiff banks, having exhausted their administrative appeals, seek preenforcement review of the legality of subpoenas issued by the FTC in connection with its investigation of the energy industry. The FTC's motion to dismiss for lack of subject matter jurisdiction and failure to state a claim is now before the court.

The motion to dismiss has generated a series of careful, learned, enlightening memoranda of law, for which the court is grateful. In the end, however, the case seems simple for our *nisi prius* purposes. While there may be questions still open or subject to elaboration at higher levels, controlling precedent appears to support the motion. *Reisman* v. *Caplin,* 375 U.S. 440 (1964); *Anheuser-Busch, Inc.* v. *FTC,* 359 F.2d 487 (8th Cir. 1966). Cases involving preenforcement review of *regulations,* not subpoenas, e.g., *Abbott Laboratories* v. *Gardner,* 387 U.S. 136 (1967), seem distinguishable on grounds that defendants brief. In any event, neither those cases nor any other cited cast the slightest doubt upon the continued validity for our purposes of *Reisman* v. *Caplin, supra.*

Proposed distinctions of *Reisman* are not persuasive. As to the threat of criminal penalties, it might be enough to say that corporations, the only species of plaintiff we have here, are apparently not subject to them. *St. Regis Paper Co.* v. *United States,* 368 U.S. 208, 221 (1961). In any event, the problem is directly covered, again, in the *Reisman* decision. Plaintiffs attempt a chain of reasoning linked to a difference in conjunctions—an "or" in Internal Revenue Code § 7210 versus an "and" in § 10 of the FTC Act, 15 U.S.C. § 50. The semantical argument is strained at best. In the absence of evidence that anyone in Congress ever noticed the difference, or meant it to be significant in any pertinent sense, the contention built upon it must fail.

Memorandum

Further on the supposed danger of criminal liability, the court finds unpersuasive the assertion by some of the plaintiffs that the mere bringing of a preenforcement action somehow demonstrates plaintiffs' "good faith" in refusing to comply with the subpoenas, and thereby protects them from potential criminal penalties under section 10 of the FTC Act.

Allowing review of the kind sought here seems especially unjustified now that the Commission has brought the usual form of enforcement proceedings wherein any proper issues the banks propose as plaintiffs may be tendered to support their resistance as respondents.

In short, without retracing all of the doctrine explored in the briefs, the court holds that the complaints in these cases should be, and they are, dismissed.

It is so ordered.

MARVIN E. FRANKEL
U.S.D.J.

Dated, New York, New York
December 31, 1975

Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIRST NATIONAL CITY BANK and CITICORP, *Plaintiffs,* *against* FEDERAL TRADE COMMISSION; and LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN NYE, Members, Federal Trade Commission, *Defendants.*	75 Civ. 4365 (MEF)

and

THE CHASE MANHATTAN BANK, et al., *Plaintiffs,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4417 (MEF)

MELLON NATIONAL CORPORATION, *Plaintiff,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4449 (MEF)

CHEMICAL NEW YORK CORPORATION, et al., *Plaintiffs,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4478 (MEF)
MORGAN GUARANTY TRUST COMPANY OF NEW YORK, et al., *Plaintiffs,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4486 (MEF)

Notice is hereby given that plaintiffs, First National City Bank and Citicorp, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of the Hon. Marvin E. Frankel, District Judge, dated and entered on the 31st day of December, 1975, dismissing the complaint in this action, and dismissing the complaints in actions Nos. 75 Civ. 4417, 75 Civ. 4449, 75 Civ. 4478, 75 Civ. 4486.

Dated: New York, New York
January 26, 1976

SHEARMAN & STERLING

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53 Wall Street
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Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) and THE CHASE MANHATTAN CORPORATION, *Plaintiffs,* *against* FEDERAL TRADE COMMISSION; LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members, Federal Trade Commission, *Defendants.*	75 Civ. 4417 (MEF)

and

FIRST NATIONAL CITY BANK, et al., *Plaintiffs,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4365 (MEF)
MELLON NATIONAL CORPORATION, *Plaintiff,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4449 (MEF)
CHEMICAL NEW YORK CORPORATION, et al., *Plaintiffs,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4478 (MEF)

Notice of Appeal

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, et al., *Plaintiffs,* *against* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4486 (MEF)

Notice is hereby given that plaintiffs, THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) and THE CHASE MANHATTAN CORPORATION, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of the Hon. Marvin E. Frankel, District Judge, dated and entered on the 31st day of December 1975, dismissing the complaint in this action, and dismissing the complaints in actions Nos. 75 Civ. 4365, 75 Civ. 4449, 75 Civ. 4478, 75 Civ. 4486.

Dated: New York, New York
January 28, 1976

MILBANK, TWEED, HADLEY & MCCLOY

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General Counsel
GERALD P. NORTON
Deputy General Counsel
GERALD HARWOOD
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Washington, D.C. 20580

Notice of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MELLON NATIONAL CORPORATION, *Plaintiff*, v. FEDERAL TRADE COMMISSION, an agency of the United States of America, and LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD and STEPHEN NYE, Members, Federal Trade Commission, *Defendants*.	75 Civ. 4449 (MEF)

Notice is hereby given that Plaintiff, Mellon National Corporation, hereby appeals to the United States Court of Appeals for the Second Circuit from the order contained in the Memorandum of Judge Frankel dated December 31, 1975 dismissing the complaint.

KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON

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Of Counsel:

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To:

The Clerk of Court
United States District Court
Southern District of New York
Foley Square
New York, New York

WARREN GRIMES, Esq.
Federal Trade Commission
Washington, D.C.

Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEMICAL NEW YORK CORPORATION and CHEMICAL BANK, *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION; LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, M. ELIZABETH HANFORD, and STEPHEN A. NYE, Members, Federal Trade Commission *Defendants.*	75 Civ. 4478 (MEF)

—*and*—

FIRST NATIONAL CITY BANK, et al., *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4365 (MEF)

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) et al., *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4417 (MEF)

MELLON NATIONAL CORPORATION, *Plaintiff,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4449 (MEF)

Notice of Appeal

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, et al., *Plaintiffs,* —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4486 (MEF)

Notice is hereby given that plaintiffs, CHEMICAL NEW YORK CORPORATION and CHEMICAL BANK, hereby appeal to the United States Court of Appeals for the Second Circuit from the order of the Honorable Marvin E. Frankel, District Judge, dated and entered on the 31st day of December 1975, dismissing the complaint in this action, and dismissing the complaints in actions Nos. 75 Civ. 4365, 75 Civ. 4417, 75 Civ. 4449, 75 Civ. 4486.

Dated: New York, New York
February 10, 1976

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1500 Oliver Building,
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MESSRS. DAVIS POLK & WARDWELL,
Attorneys for Morgan Guaranty Trust Company of New York, et al.,
One Chase Manhattan Plaza
New York, N. Y. 10005

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORGAN GUARANTY TRUST COMPANY OF NEW YORK and J. P. MORGAN & CO. INCORPORATED, *Plaintiffs,* *—against—* FEDERAL TRADE COMMISSION; and LEWIS A. ENGMAN, Chairman, Federal Trade Commission; PAUL RAND DIXON, MAYO J. THOMPSON, M. ELIZABETH HANFORD, and STEPHEN NYE, Members, Federal Trade Commission, *Defendants.*	75 Civ. 4486 (MEF)

—and—

FIRST NATIONAL CITY BANK, et al. *Plaintiffs,* *—against—* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4365 (MEF)

THE CHASE MANHATTAN BANK, et al., *Plaintiffs,* *—against—* FEDERAL TRADE COMMISSION, et al., *Defendants.*	75 Civ. 4417 (MEF)

Notice of Appeal

MELLON NATIONAL CORPORATION, *Plaintiff*, —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants*.	75 Civ. 4449 (MEF)
CHEMICAL NEW YORK CORPORATION, et al., *Plaintiffs*, —*against*— FEDERAL TRADE COMMISSION, et al., *Defendants*.	75 Civ. 4478 (MEF)

Notice is hereby given that plaintiffs, MORGAN GUARANTY TRUST COMPANY OF NEW YORK and J. P. MORGAN & CO. INCORPORATED, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of the Hon. Marvin E. Frankel, District Judge, dated and entered on the 31st day of December 1975, dismissing the complaint in this action, and dismissing the complaints in actions Nos. 75 Civ. 4365, 75 Civ. 4417, 75 Civ. 4449, 75 Civ. 4478.

Dated: New York, New York
January 28, 1976

DAVIS POLK & WARDWELL

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Notice of Appeal

To: Milbank, Tweed, Hadley & McCloy
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New York, New York

Federal Trade Commission
Washington, D. C.

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK,
COUNTY OF NEW YORK.

Gabriella Govorcin being duly sworn, says: that I am over the age of eighteen years and am not a party herein, and that on the 26th day of March , 19 76, I served a true copy of the within Appendix

upon the attorneys hereinafter named at the places hereinafter stated and set opposite their respective names by depositing the same, properly enclosed in a post-paid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department at 399 Park Avenue within the City and State of New York, directed to said attorneys at their respective addresses given below, which were designated by them for that purpose upon the preceding papers in this action, to wit:

Name	Address	Attorney for
Robert J. Lewis, Esq.	Federal Trade Commission Washington, D.C. 20580	Defendants-Appellees
Gerald P. Norton, Esq.	Federal Trade Commission Washington, D.C. 20580	Defendants-Appellees
Gerald Harwood, Esq.	Federal Trade Commission Washington, D.C. 20580	Defendants-Appellees
Warren S. Grimes, Esq.	Federal Trade Commission Washington, D.C. 20580	Defendants-Appellees
William A. Horne, Esq.	Federal Trade Commission Washington, D.C. 20580	Defendants-Appellees

Gabriella Govorcin
Gabriella Govorcin

Sworn to before me this
26th day of March , 1976.

Mark Zeichner

MARK ZEICHNER
Notary Public, State of New York
No. 41-4608908
Qualified in Queens County
Cert. filed in New York County
Commission expires March 30, 1977